United States Court of Appeals for the Second Circuit



APPELLANT'S BRIEF & APPENDIX

76-1589

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1589

UNITED STATES OF AMERICA,

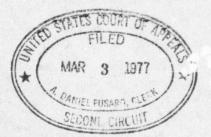
Appellee,

MANUEL ALFONSO RODRIGUEZ, and RAYMOND GERALDO,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX OF APPELLANT MANUEL ALFONSO RODRIGUEZ



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STATEMENT AND FACTS

The defendant MANUEL ALFONSO RODRIGUEZ was indicted in the United States District Court for the Southern District of New York under Indictment No. 76 CR 503 which was filed on May 25, 1976 (1A-10A). The indictment alleged four counts against the defendant RODRIGUEZ as hereinafter set forth (1A-10A).

Trial was held before District Judge Kevin T. Duffy, and a jury on September 20, 21, 23, 24, 27, 28, 29, 30; October 1, 5, 8, 1976 (12A-13A). The trial court, at the conclusion of the prosecution's case and after both sides had rested, on motion, dismissed Count II and IV as to defendant RODRIGUEZ (T724).

The trial court submitted Count I and III to the jury (T724-725). On October 8, 1976, the jury returned a verdict of guilty on both counts against the lefendant RODRIGUEZ.

On November 22, 1976, the trial judge sentenced the defendant RODRIGUEZ to a jail term of five (5) years on each count to be served consecutively (T10, November 23, 1976).

Count I charged the defendant RODRIGUEZ and others with conspiracy to violate the Gun Control Act of 1968, 28 U. S. C. Sections 5811, 5812, 5861(d), 5861 (e), 18 U.S.C. Section 100) and 18 U. S. C. Section 2 (2A-7A).

Count III charged the defendant with the substantive count of violation of 18 U.S.C. Section 1001 and 18 U.S.C. Section 2, as follows (9A):

"The Grand Jury further charges:

"On or about May 5, 1976 in the Southern

District of New York and elsewhere, DOMINICK CAGIANESE, FRANK G. ALVAREZ, IRWIN TOBACMAN, ROBERT MICHAELSON, RAYMOND GERALDO, MIGUEL D. CELIS and MANUEL ALFONSO RODRIGUEZ, the defendants in a matter within the jurisdiction of a department or agency of the United States, to wit, the United States Department of State, unlawfully, willfully and knowingly did make, facilitate (sic) the making of, and cause to be made certain false, fictitious, and fraudulent statements and representations on a certificate dated April 22, 1976 on the official letterhead of the 'Estado Mayor General de la Fuenza Armada, San Salvador, El Salvador, C.A., bearing the signature of the defendant MANUEL ALFONSO RODRIGUEZ that 10,000 Bushmaster submachine guns ... were to be used by the armed forces of El Salvador and would not be re-exported to any third party, whereas in truth and in fact, the defendants then and there to well knew that the said 10,000 Bushmaster submachine guns ... were to be sold to individuals in the United States." (9A).

18 U.S.C. Section 1001, which is entitled, "Statements or entries generally", provides:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

The government's case was presented, chiefly by government agent Joseph Kelly, who was employed by the Alcohol Tax and Firearms Bureau of the Department of Treasury (T. 175). The case against the defendant RODRIGUEZ was presented by the hearsay testimony of Agent Kelly who testified to what others said about

defendant RODRIGUEZ and by audio tapes of this hearsay.

The centerpiece around which and the cornerstone upon which the Government indicted the defendant RODRIGUEZ, (1A-10A) constructed its case against him (T6-30) and obtained his conviction by the jury upon both Count I and Count III was Government Exhibit 31, and also the variations thereof, Government Exhibits 11, 15 and 19 (T266, 267, 271, 272, 298, 300, 486, 571, 584, 585, 607-609, 715-724, 739-743, 745, 748, 750, 752, 762-764, 766, 849, 850).

The indictment expressly charged that the so-called "end use certificate" bore the signature of defendant RODRIGUEZ, to wit, as therein alleged (4A, 9A):

"...a certificate dated April 22, 1976 on the official letterhead of the 'Estado Mayor General de la Fuerza Armada, San Salvador, El Salvador, C.A. bearing the signature of the defendant MANUEL ALFONSO RODRIGUEZ." (4A, 9A).

The government prosecutor in his opening statement repeatedly declared that the government would prove that the so-called "end use certificate" bore the signature of Colonel Manuel Alfonso Rodriguez", and that the "end use certificate" was signed by Colonel Rodriguez" (T.6-30). The government presented the hearsay testimony of Agent Kelly that on May 2, 1976 at a meeting among Agent Kelly, Miguel Celis, and others, (not including defendant RODRIGUEZ) that Miguel Celis

"...removed from a folder he was carrying three blank letters which had formal letter-heads from El Salvador and which at the bottom of the page was signed with a signature (T.253)
...They explained that Colonel Rodriguez had signed the document..." (T.254); (Also 83 SA-86SA).

The prosecutor aggressively elicited hearsay testimony that the so-called "end use certificate" was signed by the defendant RODRIGUEZ. (T. 266, 267, 271, 272, 298, 299,300, 486, 571, 584-585,

607, 609, 715-724, 739-740, 741-743, 745, 748-750, 752, 762-764, 766, 849, 850). (Also 83 SA - 86 SA).

Trial counsel for defendant RODRIGUEZ at a robing room conference stated to the prosecutor that the defendant denied signing that so-called "end use certificate" (T. 254-255). The prosecutor responded to the trial court as to the blank sheet of paper on which appeared a name which had been asserted by the witness by hearsay (T. 253) to bear the signature of Colonel Rodriguez (T. 254):

"We are not going to claim that he signed it" (T.255).

Defense counselfor RODRIGUEZ then stated on that bare statement:

"I have no objection to that document" (T. 256)! The prosecutor, however, showed that while he was not going to claim it was signed by defendant RODRIGUEZ, that is GX 11 (T.254) he was certainly going to continue to elicit testimony that others, said that defendant "RODRIGUEZ signed it" (T.254); (83SA-86SA, T266, 267, 271, 272, 298-300, 486-571, 584, 585, 607-609, 715-724):

"The Court: Do you, Mr. Lang, it is a blank piece of paper.
Mr. Hallinan: How are you going to describe it, with the name of Colonel Rodriguez? (Sic) Mr. Fiske: There has been nothing said as to whose name it is.
Mr. Lang: We will get a little cross examination on it somewhere along the line.
Mr. Fiske: There has been testimory alread.

Mr. Geraldo said Mr. Rodriguez signed it. Mr. Geraldo said that at the meeting, that is not what I am saying" (T257).

The prosecutor showed that while he was not saying it, he would deliberately elicit testimony from his witness that the defendant RODRIGUEZ signed each of the GX 11, 15, 19, and 31 (T.257). (83SA-86SA, 266, 267, 271-272, 298-300, 486-571, 584, 585, 607-609, 715-724).

The prosecutor on his closing statement argued that the defendant RODRIGUEZ had signed the so-called "end use certificate" (GX 11. 15. 19. and 31). (T. 740, 741, 742, 744. 745, 748, 749, 752, 753, 759, 762, 764, 765, 766, 834, 846). The prosecutor offered jury request number 29, which again asserted and declared that the "so called end use certificate" charged in Count III was signed by defendant RODRIGUEZ: (T. 727); (T894).

"REQUEST NO. 29 Substantive Counts: First Element

The first element the Government must prove beyond a reasonable doubt is that on or about May 5, 1976, the defendants made, facilitated or caused to be made certain statements. With respect to Count Two, the statement which the Government contends was made is Government's Exhibit 30, a Form DSP-5, "Application/License" for the export of the 10,000 submachine guns. With respect to Count Three, the statement which the Government contends was made is Government's Exhibit 31, an "end-user" certificate, typed in Spanish and bearing the signature of Manuel Alfonso Rodriguez. With respect to Count Four, the statement which the Government contends was made is Government's Exhibit 32, a purchase order from San Pan Trading Corporation to Mott Haven Truck Parts, Inc."

The facts are that the Government knew since at least May 26, 1976 that defendant RODRIGUEZ did not

sign any of so-called "end use certificates" (GX 11, 15, 19 and 31) and that Miguel Celis had somehow purloined the apparent letterheads of the "Estado Mayor General de la Fuerza Armada", of the Republic of El Salvador and in the United States had traced the name of defendant Manuel Alfonso Rodriguez on them, and that in the United States, Miguel Celis, and others, filled out, prepared and typed up what became the so-called "end use certificate", in their various forms, GX 11, 15, 19 and 31, (65SA, 67SA, 73SA).

These facts appear from the official record of the official court; these facts did not appear at the trial of the action. (Supplemental Appendix 65SA - 77SA)

(After the sentence on November 23, 1976, upon the motion for a writ of habeas corpus to the District Court by the defendants RODRIGUEZ and GERALDO, the Government disclosed in a filed affidavit made by Robert B. Fiske, Jr., sworn to February 22, 1977, that Miguel Celis had testified to the Grand Jury.)

POINT I

The evidence shows that the Government presented false evidence to the Grand Jury and violated defendant's Constitutional Rights to due process of law

The Grand Jury explicitly declared in both Count I and Count III that the so-called "end use certificate" (GX 31) was "a certificate dated April 22, 1976 bearing the signature of

(4A, 9A).

Colorel Manuel Alfonso Rodriguez" / The documentary evidence in the records of the District Court shows that there were two Assistant United States Attorneys, namely, Robert Gold, Esq. and James Moss, Esq., present in court on May 26, 1976 before District Judge Charles L. Brieant at the time when Miguel Celis withdrew his plea of guilty, pleaded guilty to Count III of the indictment, and testified that in the United States he traced the signature of defendant RODRIGUEZ on the "end use (73 SA) certificate", Which was identified specifically under Count III (73 SA) a Frand Jury Exhibit 5, and that he, along with others, not the decendant Rodriguez, in the United States, prepared, filled up, and typed up the "end use certificate" described in (65 SA) Count III/ These Government attorneys were actually present and assisting at the trial of the defendant Rodriguez (T 1). Their knowledge was, of course, the Government's knowledge. Gigliov. United States, 405 U.S. 150, 154, (1972). The Sovernment knew since before the Grand Jury returned the indictment, that the defendant Podriguez did not sign the "end use certificate"/charged in the indictment and that it was Miggel Colis/had traced the signature of the defendant Podriguez thereon (65 - 74SA).

(8th Cir. 1957); United States v. Gallo, 394 F. Supp. 310, 312 (D. Conn. 1975); United States v. DeMarco, 401 F. Supp. 505, 313 (C.D. Cal. 1975).

Point II

The defendant was deprived of his Constitutional right to due process of law by the use of false evidence and testimony by the Government at trial

The indictment and the Government's case against the (4A, 9A) calendant RODRIGUEZ/was based on the Government's charge that the so-called "end use certificate", GX 31, was signed (T6-30, Supra pp. 2-6) by defendant RODRIGUEZ./ Without that, the Government had no case against defendant RODRIGUEZ on Count III and on Count I (4A, 9A).

That case was presented on false evidence known to the the process manner to be false, and deprived the defendant RODRIGUEZ of ans Constitutional Right to a due process of law, and recurres the reversal of the conviction and dismissal of the (Supra, pp. 1-7) and the Miller v. Pate 386 U.S. 1, 7 (1967); Mooney v. Hotonan, 294 U.S. 103 (1935); Napue v. Illinois, 360 U.S. 264 (1958); Alcorta v. Texas, 355 U.S. 28 (1957); Pyle v. Kansas, 317 M.S. 213, 216 (1942); Giglio v. United States, 405 U.S. 150 (1972); Blankenship v. Estelle, 545 F. 2d 510 (5th Cir. 1977); United States v. Harris, 462 F. 2d 1033 (10th Cir. 1972); Grant v. Alldrudge, 498 F. 2d 376 (2d Cir. 1974); United States v. Wilkins, 362 F. 2d 135 (2d Cir. 1964); United States v. Pfingst, 490 F. 2d 262 (2d Cir. 1972); Brady v. Maryland, 373 U.S. 83, 86-88 (1963).

Point III

The defendant was deprived of his Constitutional right to due process of law by the failure of the Government to disclose material exculpatory evidence

and it used the signature of the defendant RODRIGUEZ was (73-74SA) material, exculpatory evidence that would have changed the (4A, 9A) result on trial/and the failure of the Government to disclose that evidence deprived the defendant RODRIGUEZ of his constitutional right to due process of law and requires the reversal of the conviction and the dismissal of the conviction and the dismissal of the conviction and the dismissal of the

The Government wilfully and deliberately suppressed

is t essential exculpatory evidence, and argued and elicited

by the trial court and defense counsel/deliberately

by

misled the trial court and/counsel (T254-257, 266-268, 271-272,

deliberately deliberated this very material and essential exculpatory evidence (65SA, 73-74SA) thrown to it/from the trial court and from defense counsel.

Brady v. Maryland, 373 U.S. 83, 86-88 (1963); United States v. Wilkins, 362 F. 2d 135 (2d Cir. 1964); United States v. Harris,

402 F. 2d 1033 (10th Cir. 1972); Grant v. Alldridge,

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490 F. 2d 262 (2d Cir. 1972); Blankenship v. Estelle,

545 P. 2d 510 (5th Cir. 1977); United States v. Morell,

524 F. 2d 550 (2d Cir. 1975).

Point IV

The defendant was deprived of his Constitutional right to counsel under the Sixth Amendment by the ineffective assistance of counsel

The defendant Manuel Alfonso Rodriguez was denied the effective assistance of counsel which is his right under the Fifth and Sixth Amendments of the Federal Constitution by the ineffectiveness of retained counsel, C. Joseph Hallinan, Esq. The said retained counsel failed to make any motion to require the suppression as evidence against the defendant Manuel Alfonso Rodriguez of the so-called "end use certificate" in all of its forms, as false evidence at any time, either before trial or during trial.

The said retained counsel failed to investigate and to discover the fact that Miguel Celis had entered a plea of guilty to Count III of this indictment following a plea bargain, to investigate and discover the facts concerning the plea bargain, and to investigate the file record in this case and to discover the transcript of those plea change proceedings before Judge Charles L. Brieant on May 26, 1976 which was stamped as having been filed on August 18, 1976, more than one month prior to the commencement of the trial of this action, wherein the testimony of Miguel Celis established that he, Miguel Celis, in the United States had traced the name of defendant Manuel Alfonso Rodriguez on blank sheets of paper bearing the letterhead of the Estado Mayor General de la Fuerza Armada, San Salvador, El Salvador, which were thereafter typed up, filled up and prepared by Miguel Celis and

others, in the United States, as the so-called "end use certificate", in its various forms, and that the defendant Manuel Alfonso Rodriguez did not sign any of those "end use certificates" in any of the varied forms. The discovery and proper use of this transcript by effective counsel, needless to say, would have changed the result of this trial and would have exonerated and exculpated the defendant Manuel Alfonso Rodriguez of the counts charged against him in this indictment.

The said retained counsel, having been informed by the defendant Manuel Alfonso Rodriquez that he had no connection with the so-called "end use certificates" (in all of their various forms) and that he had not signed the so-called "end use certificates" which the Government alleged bore his signature, failed to take any steps and action to investigate the authenticity of the paper and of the alleged letterhead of the Estado Mayor Gene:al de la Fuerza Armada, San Salvador, El Salvador, C.A., on that paper upon which the so-called "end use certificate" was made, and failed to take any steps and action to investigate the authenticity of the handwriting which the Government alleged to be that of the defendant Manuel Alfonso Rodriguez thereon, and which the defendant had informed the retained counsel that he did not sign the so-called "end-use certificate", and failed to retain and utilize the services of competent and qualified handwriting experts to establish by handwriting examplars of the defendant

Manuel Alfonso Rodriguez and by other procedures including the testimony of the defendant Rodriguez at trial that the signature on the so-called "end use certificates" was not that of the defendant Manuel Alfonso Rodriguez and to present such evidence in proper form to the petit jury and Court at trial, and having a valid suspicion that the said "end use certificates" had been signed and/or prepared by Miguel Celis, (T. 586) the retained counsel failed to make an application to this Court to require the said Miguel Celis to submit to the production of handwriting exemplars, and to require his appearance as a witness upon a motion to suppress that false evidence.

The said retained counsel failed to properly and adequately consult with the defendant Manuel Alfonso Rodriguez and to properly interview the said defendant in order to prepare the defense of this indictment. Proper inquiry would have disclosed that letter correspondence by the defendant in his official capacity as Chief of Staff of the Armed Forces of El Salvador did not bear the type of number which appeared on the so-called "end use certificate(s)", that he does not identify himself as "Colonel de Artilleria D.E.M.", as written on the "end use certificate", that letters from his office would not be typed in the form and spacing that appeared in the so-called "end use certificates", that Spanish language typewriters, as distinct from English language typewriters,

included the letters "N" with the appropriate line over it and without the line over it, and with a type unit for the accent mark where appropriate, and that the type on the so-called "end use certificate" was inconsistent with the type of a Spanish language typewriter. Proper attention to the so-called "end use certificate" would have shown that the second paragraph of the so-called "final" "end use certificate", introduced in evidence at the trial as Government exhibit 31, had consisted of lighter letters and different type. No effort was made by the retained counsel to investigate these factors, or to retain expert(s) in this area.

The said retained counsel, having been informed by the defendant Manuel Alfonso Rodriguez that as chief of Staff of the Armed Forces of El Salvador, under the laws and procedures of the democratic Republic of El Salvador, he had no power and no authority to order or to purchase any arms on behalf of the Government of El Salvador and that all orders for the purchase of arms must emanate from and be made by the Minister of Defense, with the approval of the President of the Republic of El Salvador, and with the further review and approval by that nation equivalent of the Bureau of the Budget, and the vote of approval and appropriation of money by the National Assembly of the Republic of El Salvador, and with the knowledge and approval of the Foreign Minister of the Republic of El Salvador, and that the United States

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Department of State had full knowledge and understanding that those were the laws and procedures of the Republic of El Salvador, and further that the United States Dept tment of State carefully controlled and monitored every request to purchase arms by the Republic of El Salvador and that no formal request to purchase any arms would be made until after appropriate inquiries would be made to certain official agencies of the United States Government, including the United States Ambassador to the Republic of El Salvador and the United States Military Attache of the United States Embassy in the Republic of El Salvador, the said retained attorney failed to make the necessary investigation thereof, to interview witnesses to establish these facts at trial, to obtain and present witnesses thereon to the court and jury at trial to establish that the so-called "end use certificate" was incapable of influencing any person having jurisdiction to receive, review, and pass upon applications for arms export licenses and that the same was not material.

The retained counsel failed to make any motion to suppress all evidence of the incident on May 15, 1976, including the videotape and audio tapes thereof, as herein made and set forth.

The retained counsel failed to make any motion to suppress the so-called "post-arrest statement", as herein

made and set forth and, on the contrary, instead of moving to suppress it, this retained counsel actually insisted upon introducing it in evidence at the trial (T. 514-515; 628-632) notwithstanding the cautions which the Trial Court justly and properly called to the attention of the retained counsel (T. 521: "Are you sure you want to put this?"; T. 524: "Bring it out through him" (the defendant Rodriguez); T. 524: "That could be miscontrued by the jury"; T. 524: "Let's not have the danger come before the explanation; "and T. 628: "that document is not going to go in unless Mr. Hallinan insists that it comes in"; T. 628: "I don't want that document in here"), notwithstanding the obvious damage and prejudice of that so-called "post-arrest statement", to the defense of the indictment, and notwithstanding the obvious usefulness of that "post-arrest statement" to the prosecution and its obvious lack of usefulness to the defense, and that the prosecution could not have introduced that "post-arrest statement" upon the trial, certainly not on its case in chief, and in the face of the facts, and the defendant Rodriguez had informed the retained counsel of the circumstances which occurred, which were inconsistent with the "post-arrest statement", and notwithstanding that the defendant Rodriguez informed the retained counsel that the "Statement" was not a true or accurate representation of what had actually occurred which the retained counsel acknowledged on the record (T. 629) even 'though retained counsel did not state the true facts and that there was a great deal that was not true and correct, and that the so-called Spanish interpreter had little apparent competence in the Spanish language and that the alleged questions and answers were not true or accurate, and as more fully set forth below on the motion of the defendant Rodriguez to suppress that alleged "post-arrest statement".

The failure of retained counsel to investigate the incident on May 15, 1976, including the actions and procedures of the Government in videotaping and audio taping one or more rehearsals of the interrogation planned by the Government for the defendant Rodriguez and to promptly move in Court to require the Government to produce all of such videotapes and audio tapes, which, as a result of the failure of the retained counsel to act, as your deponent was informed by Agent Wessel of the Alcohol, Tax and Firearms Division of the United States Treasury Department, informed your deponent on January 17, 1977 that the tapes are no longer available and were probably erased or reused, but at what time or under what circumstances, Agent Wessel stated that he did not know.

any of the local police officers of Westchester County and to move to obtain copies of their reports concerning this indictment.

The failure of retained counsel to make any

inquiries of and at the Office of Munitions Control of the United States State Department concerning this indictment, including the failure to inquire of the appropriate officials, including Mr. John Walsh whether there was an embargo on all applications for license to export any arms to El Salvador at the time of the incidents herein; whether that office was informed of and was aware that the "application" was part of an operation by the Alcohol, Tax and Firearms Division of the United States Treasury; whether the Munitions control Office knew of and was familiar with the laws and procedures of the Republic of El Salvador governing arms requests from the Republic of El Salvador, and that the chief of Staff of the Armed Forces of the Republic of El Salvador had no authority and no power to make any request for any arms purchase; whether the Munitions Control Office had knowledge or information that the "end use certificate" in this case was not authentic, and whether such "end use certificate" could possibly influence the decision making process of the Munitions Control Office; whether a DSP-83 was necessary in view of the submission of the socalled "end use certificate"; whether in fact anyone at the Munitions Control Office required that a DSP-83 be submitted as part-of that "application"; what was the meaning, use and applicability of the DSP-83 to an alleged request or order from a foreign Government, and what was the meaning and effect for the Munitions Control Office of a DSP-83 signed in item 6 generally and in this case, and why was a signature placed in item 6 on a

form DSP-83 in this case since item 6, entitled "certification of Ultimate Consignee, (This item is to be completed by Ultimate consignee only") plainly applies only to a "firm" as the ultimate consignee and plainly does not apply to a foreign government, since item 8 plainly applies to a foreign government, which item is plainly entitled, "certification of Foreign Government - Non-Retransfer Assurance. (This item is to be completed only upon request of the Department of State. (ee Part 123 of the International Traffic in Arms Regulations - 72 C.F.R. 123)" and since item 8 was marked "Not applicable", and since there was an alleged "purchase order" submitted with the application by San Pan Trading Corp. as purchaser, to Mott Haven Industries Ltd., as seller, and since item 7, of form DSP-83, entitled "Certification of Purchaser (This item is to be completed only: (1) where the purchaser is not the same as the ultimate consignee; or (2) where the ultimate consignee is unknown), " was marked "Not Applicable", and since the defination of "Ultimate Consignee" which is set forth on the DSP-33 form, states: "Item 1 - Ultimate consignee must be person abroad who is actually to receive the material for end use. A bank, freight forwarding agent, or other intermediary is not acceptable as an ultimate consignee", and since the definition of item 6, which is set forth on the DSP-83 states: "Item 6-Only an official of the ultimate consignee named in item 1 should complete this item. Be certain to sign statement in ink as well as type or print name and title of person signing

DSP-83 the idea of the Government after the Government learned that the signature on the "end use certificate" was not that the defendant Manuel Alfonso Rodriguez, and was Miguel cells working for, or "cooperating" with the Government since the tirst week in May, 1976.

The retained counsel failed to investigate and research the meaning and effect of the notice which we have on form DSP-83, to wit: "The making of any false attacement, the concealment of any material fact, or failure to tile required information may result in denial of particles in United States exports. Notarization is not recorded and failed to prepare and use such information on benealf of the defense of defendant Manuel Alfonso Rodriguez and the defense whether that notice precludes the application of 18 U.S.C. Section 1001 thereto.

The retained counsel failed to make any motion to the indictment, including a motion to discuss each count of the indictment for insufficiency, which would have served additionally to obtain and preserve the retendant Rodriguez a more advantageous standard of appellate review of the sufficiency of the indictment and each count thereof, (none of which alleged that the statements were the result of the sufficiency of count III failed to

state facts to show that the allegations in the "certificate" were false, in that the allegation that the arms "were to be sold to individuals in the United States is not inconsistent with and does not show the falsity of the alleged representations charged. The preparation set forth in Part III, paragraphs 11(a) and 11(b) of the indictment, the word "facilitating" set forth in "Overt Acts", paragraph 7 of the indictment, the word "facilitated" set forth in "Overt Acts" paragraph 15 of the indictment, the words "facilitate the making of" set forth in count III of the indictment, on the grounds that the word "facilitate", in all of its stated variations is not any element or part of, nor is it a proscribed conduct or act under any criminal statute charged against defendant Rodriguez and that such allegations in the indictment denied the defendant rodriquez his federal constitutional right of due process of law, not to be charged by indictment with a non-crime and not to be convicted of crime based upon an act which is not a crime, as to which act, "facilitate", the trial court, plainly relying upon the indictment, rather than the criminal statutes, charged the jury that the crime charged could be so committed, i.c., by facilitation, and that the defendant Rodriguez could be lound unilty of the counts charged against him on that basis (T. 869, 872, 873, 888, 892, 893, 895) in violation of the federal constitutional right of defendant Rodriguez to due process of law.

The retained counsel failed to make any motion directed to the face of the indictment to strike the words set forth therein, to wit, "facilitated".

The retained counsel failed to make any proper written motion on behalf of defendant Manuel Alfonso Rodriguez for pre-trial release pursuant to 18 U.S.C. Section 3146, and failed to pursue appropriate appellate review of a denial of reasonable bail to the United States Court of Appeals, and if the cassary, to one or more Justices of the Supreme Court of the United States and failed to carry out and to perform his ethical and professional duties to the defendant Rodriguez to make every proper effort to obtain the pre-trial release from jail confinement for the defendant Rodriguez.

The retained counsel failed to proceed promptly and interest therefor by defendant Manuel Alfonso Rodriguez to him, and in view of the fact that of all of the defendants charged by this indictment, only the defendant Rodriguez remained confined to jail on and after June, 1976.

The retained counsel failed to make a motion

May after May 15, 1976 pursuant to 18 U.S.C. Section 3164

To obtain the mandatory release of the defendant Rodriguez from

jail confinement by reason that the defendant Rodriguez had been

confined in jail since May 15, 1976 and that more than 90 days

mad passed and the trial had not commenced within 90 days fol
lowing May 15, 1976.

The retained counsel perpetrated a sham and a fraud upon the defendant Manuel Alfonso Rodriguez, for the obvious purpose of giving him the false appearance that the retained counsel was actively working to defend him against the indictment, by subjecting the defendant Rodriguez to submit to one or more "lie detector" tests, which, not only were improperly conducted, and in which the questions posed by the operator of the tests were posed in English to a translator who then conveyed the question, allegedly as translated, in Spanish to the defendant Rodriguez, who responded in Spanish to the translator, who allegedly translated that answer into English for the test operator, but which were utterly useless to the defense of this indictment, even if the tests had been properly conducted, since the results of such "lie detector" tests are not admissible in evidence at trial, and the retained counsel knew this, or should have known this. Furthermore, such "lie detector" tests and its results, if admissible, could have been usable only if a defendant testified to that matter, for the purpose of bolstering his tectimony on that matter. The action of the retained attorney served no valid defense purpose.

tigate and to properly prepare a defense presentation to the court and jury at trial by live witnesses, including the defendant, to show the valid official purpose for the presence of the defendant Rodriguez, in the United States, to wit, as

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official representative of the Republic of El Salvador to negotiate a peace treaty with the Republic of Honduras.

The said retained counsel failed to properly or adequately research the laws, rules of evidence, and cases applicable to this indictment and to apply the facts of this case thereto so as to carry out his duties as defense counsel. The retained counsel actually stated on the record..."I will ask on my case that the videotape be replayed. It is my determan (T. 169).

The retained counsel made no objection at trial to the introduction by the Government into evidence of the socolor "end use certificate" allegedly "signed" by the defendant Rodriguez and marked as Government Exhibit 31 (T. 617, 618)
and the retained counsel made no objection to the introduction
the Allerk sheet of paper bearing the alleged letterhead of the
"Estado Mayor General de la Fuerza Armada, San Salvador, El
Salvador, C.A.", and allegedly "signed" by the defendant Rodtion and a Government Exhibit 11 (T. 257-258), and the
retained counsel made no objection to the introduction by the
Government into evidence of a photocopy of a one-paragraph varaction of the so-called "end use certificate" also allegedly
"signed" by the defendant Rodriguez and marked as Government
Exhibit 15 (T. 269-270), and the retained counsel made no objec-

allegedly "signed" by the defendant Rodriguez and marked as dovernment Exhibit 19 (T. 277-278). As set forth above, the so-called "end use certificate(s)" formed the centerpiece and the cornerstone of the Government's case against the defendant Manuel Alfonso Rodriguez. As set forth above, these so-called "end use certificate" in fact were not signed by the defendant Manuel Alfonso Rodriguez, and he had no hand in their preparation, and as set forth above, Miguel Celis had traced the name of the defendant Rodriguez on exhibits in the United States and Miguel Celis had, with others, not the defendant Rodriguez, filled up, typed up and prepared those exhibits. As set forth above, the retained counsel had been informed by defendant Rodriguez long before the trial that he did not sign any such accepts and did not have anything to do with them.

without those exhibits in evidence, count III of the indictment must be dismissed.

without those exhibits in evidence, Count I of the indictment would be dismissed, or at the least wouldpresent a solid basis for dismissal of that count.

the meaning and importance of those exhibits to the defense of wannel Alfonso Rodriguez, and did not know about or understand the rules of evidence with regard to excluding such exhibits by proper objections, or having such knowledge or information,

contrary to those duties and in favor of the prosecution with the purpose to effect the conviction of the defendant.

Upon proper objection by defense counsel none of those exhibits could have been admitted into evidence by the Government:

Against the defendant Manuel Alfonso Rodriguez unless the stovernment laid a proper foundation to establish the authenticity of the signature, the paper, the letterhead, the typing,

Black, which the Government could not have been able to do

Line the Government had not sought nor obtained any handwriting exemplars from the defendant, and particularly since the Government knew that the defendant Rodriguez did not sign any of those exhibits and that the perpetrator of the exhibits was Miguel Celis, the Government's own witness.

The retained counsel made no objection at trial to the introduction by the Government into evidence of the form DSP-83, as offered, and marked as Government Exhibit 27 (T. 316) and and included that the defendant Rodriguez had signed it (T. 156-257, 542), notwithstanding the fact that the defendant Manuel Alfonso Rodriguez had informed the said retained counsel that he said not sign that form DSP-83 in the form and condition in which it was offered, and notwithstanding the fact that the Government had laid no proper foundation for the introduction of that exhibit against the defendant Rodriguez, the retained counsel not only made no objection to its introduction by the

Government in evidence against the defendant Rodriguez, but actually joined in the introduction of that exhibit (GX 27 and of the videotape, GX 28.11), after Mr. Lang, attorney for defendant Raymond Geraldo objected, the Court asked Mr. Hallinan: "The Court: Okay, Mr. Hallinan? Mr. Hallinan: No. on the contrary, I join in the government's offer of these exhibits in evidence, your Honor." (T. 316).

Government Exhibit 27, is a white colored form. The Government prosecutor in his opening described the DSP-83, as "a pink form called a DSP-83" (T. 21). The hearsay testimony of Government Agent Joseph Kelly, on direct, however, was that "Mr. Alvarez also told me that he had a copy of the pink form that the State Department sent to El Salvador for the colonel to sign. I asked Mr. Alvarez what this pink form was all about, and he told me that this was a questionnaire that the State Department sent to El Salvador which asked certain questions about the disposition of the firearms in question" (T. 300). (Underscoring added). Mr. Kelly continued with his hearsay testimony: "I asked Mr. Alvarez if I could get copies of these documents and he said, 'Sure, certainly, stop around any time', and then I made arrangements to meet him later that afternoon to pick up these documents" (T. 300). The hearsay testimony of Government Agent Kelly indicated that Mr. Alvarez had told him that Mr. Alvarez had "just received copies of letter that the State Department had sent to the gun manufacturer requesting certain specifications about the guns" (T. 300) and that the conversation with Mr. Alvarez was had by telephone between Government Agent Kelly and Mr. Rodriguez on May 12, 1976 (T. 298, 299). Mr. Kelly testified that "Mr. Alvarez gave me photocopies of the two letters from the State Department and he also gave me a copy of the State Department form that was sent to El Salvador, the DSP-83" (T. 302). The photocopy was marked Government Exhibit 23 (T. 302). The retained counsel did not object to the introduction in evidence thereof by the Government (T. 565).

however that "Alvarez told me he gave the original of the document to the Major who was taking it down to El Salvador" (T.554). The retained counsel made no use of any of these contradictions.

Agent Kelly's report for May 12, 1976 which showed only that he received two letters from Mr. Alvarez; there was no mention in that report of his having received a copy of the form DSP-83 from Mr. Alvarez, to wit: "On May 12, 1976 at approximately 2:25 P.M. at Mott Haven Truck Parts, Bronx, New York, the defendant Alvarez met with two A.T.F. undercover agents who received from him photocopies of two letters from White Arms Company to the U.S. State Department concerning the sale of the Bushmasters machine guns. (Ex. 1-Kelly), (E 1-g-Letter dated 5/6/76 from White Arms Co.) (Ex.

In-Letter dated 5/10/76 from White Arms Co.) (Ex. 2-C/I #18), (Ex. 19-Nagra SN Tape dated 5/12/76)." (T. 344-346). Government Agent Kelly did not report receiving a copy of a DSP-83 from Mr. Alvarez on May 12, 1976. The retained counsel made no effort to conduct a voir dire; the brief effort at a voir dire made by Mr. Lang, the attorney for defendant Geraldo, was interrupted by the Government, cut short, and never resumed (T. 303-304; 594). The retained counsel made no objection to prejudicial hearsay and double hearsay (T.301) testimony strest the defendant. He consented to obviously prejudicial evidence which effective counsel should not have consented to and me that state of the record could have kept out.

with respect to Government Exhibit 27, Government Agent Kelly testified that this was handed to him by Migorl celis on May 15, 1976 (T. 314) and that this form was taken out of a briefcase that was brought to Mr. Celis by police Officer Cercena (T. 314). Not only was there no connection established between that form DSP-83 and the defendant Kodriguez, but the testimony showed that the (pink?) form was or could have been in the possession of the Government up until the time that it was allegedly handed over by Miguel Celis to Government Agent Kelly (T. 314). It is notable also that Government Agent Kelly did not show that (pink?) form DSP-83 to the defendant Rodriguez at that time (T. 483, 526, 527) and that there is no evidence except the bare testimony of Govern-

over by Miguel Celis to him on May 15, 1976.

The retained counsel failed to perform his the to the defendant modriquez to compel the Government to prove every element of the charges made in the indictment by mayoud a reasonable doubt and failed to require to Government to prove by valid, advissible evidence that the defendant modriquez had signed the DSP-83 (GX 27), and that when igned, that it was in the form and condition in which the presented to the Court, and that defendant had seen, read, and anderstood both sides, as to which there was no evidence.

The retained counsel failed to make any inmanely deverament Exhibit 23, as to where it was copied, as to
makely deverament Exhibit 23, as to where it was copied, as to
makely deverament Exhibit 23, as to where it was copied, as to
makely deverament Exhibit 23, as to where it was copied, as to
make the state of the send in the state of the send investigate
make the state of the send when, and who had possession of
the and when. Whether in fact the State Department had "sent"
make which the "pinh form" to mr. Alvaroz, and if so, who in
the state Department did that, and when, and as to Government
exhibit 27, the alleged original DSP-83, which is a white form
and not a pink form, the retained counsel failed to conduct
the reveatigation as to its source, who typed it up, when,
where, and who had possession of it, and did Miguel Celis have
procession of it at any time, and was it then in the form pre-

The retained counsel failed to request the proper preliminary charge from the Court on the use and application of hearsay evidence when Government Agent Kelly gave his first hearsay testimony (T. 182) or at any later time.

The retained counsel failed to object to the hearsay testimony of Government Witness Gomez who was presented as a legal expert in State Department procedures (T. 596-599, 611-613, 637), including the DSP-83 form, (T. 611-612, 643) whereas the barest voir dire would have established his incompetence and total lack of actual knowledge or training on this subject; the most superficial reading of Mr. Gomez' Grand Jury testimony shows that his function was merely as a delivery man of the "application" to the State Department (G.J. dated 5/21/76 pp. JJP 2, 3), that Mr. Gomez could not even read Spanish except poorly, that he didn't know how many times he had gone to the State Department "no more than once or twice before" and none since May 5, 1976 (G.J. Gomez, 5/21/76, pp. pc-1, pc-2). (See T. 597, Gomez testifies that it was the "regular course of business at Americana de Fuarzas to cause these documents to be filed at the office of Munitions Control", with objection by the retained attorney and his claim to be personally familiar with the documents required to be filed), that he had never seen a DSP-83 form except "an example of a DSP-83 in the Munitions Control Regulations book" (ibid., p. P.C. 3) and that he had not "personally held one in your hand" (ibid., p. P.C. 3). At the trial, howover, the Government had Mr. Gomez testify to a meeting with Mr. Henry Moed at Mott Haven Truck Parts, Inc. prior to May 5, 1976 over Mr. Lang's, but without objection by the retained accorney for this defendant: "Q. What was said A. First of all, Frank called me to his office. I went there. Henry Mold was there with Frank Alvarez. They had completed the believe, and the two other documents and Frank said to Henry 'Tim Gcmez seems to think that we need an additional form to be filed with these documents, a form DSP-83; and I to Henry, 'Yes, it seems to me that these particular pargraphs in the regulation indicate that you might need these forms or this form" (T. 611). Mr. Gomez testified that he, pages, first suggested "that that form might have to be filed in a meeting with him earlier that day." (T. 611, 612). . Gomez also testified to the Grand Jury that he did not by thek any documents from Washington on May 5th: "Q. Did you bring any documents with you back to New York from your trip to Washington on May 5th? A. No". (Ibid, pp. PC-4), and that he was prodded and led by the prosecutor to testify that he had brought back "a blank DSP-83" (ibid.) and that he filled it out and gave it to Mr. Alvarez, but that he did not . I he form and did not answer that he put any information on the DSP-83 form (ibid.) but evaded the response by the nonnequitur that "the information is contained on those forms that I took to Munitions control" without any explanation as to how he got the information since the forms were filed. Mr. Gomez testified to the Grand Jury that he never saw that form again (ibid). The Government prosecutor did not show to Mr. Gomez the DSP-83, which was offered as GX 27 at the trial, for his identification (ibid) either then on May 21, 1976 or on his second appearance before the Grand Jury on May 24, 1976. At trial, Mr. Gomez was caused to testify that he "left the Office of Munitions Control" not with "a blank DSP-83" (G.J. Gomez, 5/21/76, PC-4), but "well, various forms, the latest copies of bulletins and so forth and also this DSP-83, referring to GX 27, as to which there was no evidence and no basis in the trial evidence for this identification testimony by Gomez and who at the Grand Jury, May 21, 1976, pp. P.C.-4, he testified he could not recall the form, and he testified at the trial only that he "gave ... Frank Alvarez one or two copies of it ... " and did not testify that he typed up any information on any DSP-83 form (T. 620). The retained attorney's cross examination consisted of questioning Mr. Gomez as to his knowledge of geography, and of his single visit to El Salvador (T. 652-653)! There was an abandonment by the retained attorney of his defense duties. The retained attorney raised no objection when the Government on redirect examination of Mr. Gomez invested him as a "legal expert" on the meaning of registration and compliance with the laws (T. 654) and his "expert opinion" as to whether the application would succeed (T. 655). Mr. Lang objected (T. 655).

The retained attorney, on his cross examination of Government Agent Kelly, elicited testimony from him, which the Government could not have done, as to what was in the mind of the Government agents and police, and the United States Attorney, in order for them to satisfy themselves and In the words of the retained attorney in his "summation", "to make it absolutely clear, if they could, the colonel's participation, criminal participation in these proceedings (T. 809), that the defendant had committed a crime before by concluded to arrest the defendant (T. 808-812), the whole or which served and could serve only the prosecution and none no which could benefit the defense, and which had the obvious purpose and effect to establish that when the arrest was made, it was made only because every element constituting the commission of crime had been established against the defendant 100. guas (T. 812).

The retained attorney repeated these very could become the jury on summation (T. 808). The only value and purpose was to bolster, if not fully establish, the prosecution's case and to destroy any thought of defense in the single of any juror. The retained attorney's argument was that the proof could have been better and could have been nailed down tighter against the defendant Rodriguez and "Why should the give to infer" (T. 811), "They could have taken all the process out of this case" (T. 812).

The retained counsel strove hard and mightily to have Government Agent Kelly testify on cross-examination that the defendant Rodriguez had knowledge that the transaction involved 10,000 machine guns in the face of and to overcome Government Agent's testimony on cross-examination, and even overcoming the Government's objection, to wit: "By Mr. Hailinan: Q. Agent Kelly, I think you have stated it is your recollection that during this session on May 15th in the motel that was videotaped and audio taped the Colonel admitted to you that he knew this transaction treated of 10,000 machine guns, is that correct? Mr. Fiske: He hasn't said that, your Honor. The Court: I know, but he is going to say no, so Let him go ahead and say it. Mr. Fisk: Mr. Hallinan said it was his testimony that he had said that. Mr. Halliman: No, I said his recollection. The Court: His recollection is what he said, yes. Let him say what he is going to say. A. No, sir. Q. What is your recollection on that particular point? A. can you repeat it, please? Q. no you have a recollection that during the session on May 19th in that motel room the colonel admitted that he knew 10,000 mehine guns were involved in this transaction? A. the colonel never said that. I said that ... " (T. 505, 506).

Even after the Government prosecutor stipulated that Government Agent Kelly's statement as to the 10,000 machine guns was not translated into Spanish (T. 508-509), the retained counsel pursued the matter to "prove" the knowledge of the defendant Rodriguez, as if he were the Government prosecutor, and yet the Government prosecutor could not have done what the retained counsel did in order to convict the defendant Rodriguez, to wit, by Mr. Hallinan: "Q. Agent Kelly, when you left the session on May 15th when you had your videotape and you had your audiotape, didn't you have a recollection that the colonel did admit both of these things? No, sir. Q. What do you think he admitted? A. didn't know what the colonel had admitted. He spoke in Spanish. Q. Did Angelo say anything to you about whether the colonel had admitted these things? The Court: Angelo being Agent McNinney? The Witness: Yes. A. My recollection is that he proposed a question to the Colonel and that I had asked him to translate to the Colonel and that he responded yes, he understands. Q. We are talking now about 10,000 machine guns and them not going to El Salvador, on that point? A. I cannot remember, Sir. Q. Refresh your recollection from the transcript. A. I am looking at transcript page 13 where Angelo is speaking in Spanish and pefers to machine guns, but does not refer to them not going to El Salvador. Q. Agent Kelly, does he refer to 10,000 machine guns? A. No, Sir, just machine guns. Q. The answer to my question then is no, isn't that correct? A. That's correct..." (T. 509-511).

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The retained counsel doggedly persists in this cross-examination of Agent Kelly to establish that the defendant Redriguez, whom he was retained to defend, had knowledge that the transaction involved 10,000 machine guns: The retained counsel digs up Agent Kelly's Grand Jury minutes to help him do the job on the defendant Rodriguez, something that the prosecution itself could not do, to wit, quoting from the Grand Jury testimony:

"Q. And in the course of those discussions did colonel Rodriguez acknowledge in substance that he was aware that the documents he had provided and the documents he was providing were to be used to facilitate a transaction in submachine guns and that the transaction was not in this country?

A. Yes, sir." (T. 533).

The retained counsel failed to object to the hear saw testimony, and double and triple hearsay testimony by Government Agent Kelly, and as to the tapes, which were offered for the truth of that hearsay, and did not seek or obtain proper court limiting instructions.

The retained counsel on summation effectively argued the prosecution position; he assured the conviction of the defendant by his argument on a matter that was not in evidence, that Miguel Celis had informed the defendant, although "never fully", "what this transaction was all about" (T. 796-797). Either the retained counsel intended to assure the conviction by the jury of this defendant, or he simply did not

know what he was saying; in either event, it was ineffective assistance of counsel.

The retained counsel's summation was more consistent with a prosecution of the defendant Rodriguez, than a defense for him. The retained counsel declared on summation that Miguel Celis "is the direct link allegedly with the Colonel" (T. 797), that he could not ask Government Agent Kelly "did you have this conversation with the Colonel in San Emilyador, because Agent Kelly is telling us what Celis says. He is doing his job the best he can. ..." (T. 797). He argued the sham argument, which was obviously so to the jury since he did not call Miguel Celis as a witness, "But I want Celis", after he condemned the defendant by his words that the defendant had been informed of what this transaction was assent by celis.

The retained counsel conceded to the jury that the defendant signed that DSP-83, in that completed form the attorney that that was not so. The retained counsel after having stipulated that the defendant had signed the manager in the form in which it was admitted into evidence, namely, GX 27 (T. 542, 256-257) actually argued to the jury. "That's our defense": (T. 830). He made the statement that "The colonel said he thought it was for fire arms" (T. 830).

argued and told the jury that Miguel Celis had discussed the transaction with the defendant for 10,000 machine guns (T. 796-797) and in the face of the fact that the DSP-83, which was admitted in evidence on the stipulation of the defendant Rodriguez' retained counsel, which states clearly thereon, 10,000 bushmoster machine guns (T. 316) was obviously and only intended so that the jury could swiftly destroy and knock down the argument and render that defense argument as the retained counsel had made sure his argument for defense would be destructive of the defense, rather than supportive of any defense. Indeed, at the trial before sumtation, the retained attorney acted to prevent and to preclude any defense.

The retained counsel, after having insisted again introducing in evidence the so-called "post-arrest statement", DX-1 (T. 514-515, 524, 628-632) tightened it around the defendant's neck and argued against the interest of the desendant as to matters not in evidence, and declared: "A half-hour after you are arrested, one hour, you are in a strange country, you don't handle the language, you have just neen taken into the tender loving arms of the awesome power of the united States Covernment, you are a high ranking military official, so you are not stupid, you are told you have the right to an attorney, and he says 'No, I don't need an

you anything about that document, that declaration. That's not my function" (!:!) (T. 813). It is an argument more consistent with the prosecution, than the defense; it is not based on the evidence; and it is contrary to the information stated by the defendant to the retained counsel. The argument could only have been designed to injure the defendant, preclude his rights, and insure his conviction.

Here the retained attorney again argued that the defendant was informed about this transaction by Miquel celis as being for 10,000 machine guns: "Now, let's set it in a proper setting. We have been told by Agent Kelly that celis had told him that he had discussed the problem, the socalled problem, of the State Department. Before the videotape collective him that on prior meetings and during the videotape. Agent Kelly didn't remember it, but I pointed to where it was and he agreed it was there. Celis had said this. 'I talked to him about this already. All right. So you have the organie. You have colonel Rodriguez in a meeting according to colis he knows all about and he knows exactly what is doing to happen and he has been prepared for it ... " (T. 815), and spain at T. 818, and T. 819, and again at T. 824. Again at T. 830, the retained counsel repeats that argument in case the mary may not have understood it, that Miguel Celis was take a brother to the defendant, very close to him (T. 830) and that Miguel Celis "gives him a little information about

what the transaction in New York is about. He gets his signature on a document without ever <u>fully</u> explaining that document... And do you know why he would attempt to do this? Because he knows how small El Salvador is and he is willing to gamble that this request is going to be so ridiculous that the State Department is going to reject it without checking it...." (T. 830-831). Of course, Miguel Celis never was a witness at trial; the speculations of the retained counsel, however, were all in favor of the prosecution and

The retained counsel's summation aided the presecution not only by reiterating the prosecution's opening and reminding the jury again of those remarks, but also by clearing up an ambiguity raised by the Government proseour (1.835-836) who argued on summation that the defendant Resirigues received \$75,000 for 'this one piece of paper', which was identified by the prosecution as GX 23, the alleged form Ddp-83 (T. 835) and who could not logically resolve the problem of how he could argue that the defendant Rodriguez was allegedly paid \$75,000 for the so-called "end use certifirste", Government Exhibit 31, on May 15, 1976, when he knew that the defendant Rodriguez neither signed it nor prepared it, nor knew about it, and when he knew that the said GX 31 had already been "delivered" by Miguel Celis and had already hoos filed on May 5, 1976 in the State Department, without anyone having paid any money for it to anyone, certainly not

to defendant Rodriguez; the prosecutor had shifted ground to the claim that the defendant was "being paid" \$75,000 for the pink DSP-83 (T.765-766; 835-836). The retained counsel "argued" to the jury, or more correctly, reiterated the prosecutor's opening: "There is a discussion with Colonel Rodriguez, directly with Colonel Rodriguez, to confirm exactly what it is that colonel Rodriguez is doing for this \$75,000 in cash that he has demanded. It is confirmed that for that \$75,000 in cash he has provided the document which has already been filed in the State Department, comma. That's the so-called end use certificate " (T. 800).

The retained counsel went so far as to state:

"You have to find the defendant guilty beyond a reasonable

doubt" (!)(T. 832), but that the government had not eliminated

"11 doubt" (T. 832). The retained attorney was actually

telling the jury to assume that the defendant was guilty be
yond a reasonable doubt, but not beyond all doubt (T. 832):

"You know how to eliminate all doubt from this case, assuming

the defendant is guilty." (T. 832). The retained attorney

plainly conceded the guilt of the defendant, which he had

absolutely no right to do, and which is contrary to his dut
ies as a defense attorney. The retained counsel, having told

the jury to assume that the defendant was guilty, then set

about to instruct the jurors as to how they could eliminate

"all doubt" of guilt from their minds: "Word by word, both

documents. You make sure he understands... " (T. 832).

The retained counsel had already dragged out testimony from Agent Kelly to show that the defendant knew that this transaction involved 10,000 machine guns (supra, pp.31-38) and he argued to the jury that Celis had told the defendant what the transaction was about, (supra, pp.74-80). It all fitted together to insure the conviction of the defendant.

while it will be argued that the retained coursel might have been referring to how the Government and have eliminated all doubt that the defendant Rodriguez was quilty of the charges made, the plain and real thrust of that argument was that the attorney for defendant Rodriguez was conceding to the jury that the Government had proved the case against the defendant Rodriguez beyond a reasonable doubt and that the Government could well have proved the case against the defendant Rodriguez beyond all doubt by some very simple additional steps.

The summation of the retained attorney, as well as the conduct of the retained attorney both pre-trial and at trial, deprived the defendant of his constitutional right to a fair trial and to due process of law by the inclinative assistance of counsel which insured, if it was not actually designed for, the conviction of the defendant Rodriguez.

The retained counsel's arguments on summation concerning the "end use certificate" have the effect of focusing the attention of the jury on it as a valid, bona fide document, whereas it was not. The retained counsel quoted repeatedly and copiously of the arguments of the prosecution and put those arguments again and again before the jury without presenting responses which would or could neutralize or discredit the Government's arguments. The plain effect was to bolster the prosecution, and to destroy any defense. The retained corney created a strawman to argue that the videotape did not show that "the colonel acknowledges any knowledge of an use certificate" (T. 801), which argument the jury must assessed and since whether he "acknowledges" on the videotape or not, the retained counsel had already argued and conceded that defendant was informed of this transaction by Miguel Celis 194-797). The retained attorney focused the jury's attenries on the defendant's "counting money" on the videotape 7 7 (6-797), but he did not produce the defendant to show the money was foisted on the defendant and that he was ordered to help count the money put there, and to offer the de and int's view of what happened, and thus, the action of the and attorney in focusing on that matter was damaging to the defendant without any redeeming purpose and without having prepared any trial explanation, or even any argumentative explantage. By indirection, the retained attorney conveyed to the jury his opinion that the prosecution had a very strong

the defendant: "I agree with my colleague that it is not the black and white case that the government thought that it had." (T. 804).

of course, the total failure of the retained attorney to put up any real opposition and defense thereto

he some in mind. The retained attorney repeated Kelly's testimony which again placed before the jury that the defendant signed the "end use certificate" GX 31, when he knew that the alone "He has heard that Celis says that the Colonel has need this end use certificate in blank..." (T. 806). He around that the Covernment did not produce any handwriting accounts prove that the defendant signed the "end use certificate" (T. 806). However, the argument was transparently sham and frivolous to the jury since that attorney had made no objection to the covernment offered it in evidence against the defendant, there is a signed attorney offered no evidence to contradict that testificated attorney offered no evidence to contradict that testificated attorney offered no evidence to contradict that testificate that testificate that testificate the contradict that testificate that testificate the contradict that testificate the contradict that testificate the contradict that testificate in produce the contradict that testificate the contradict that testificate the contradict that testificate in produce the contradict that testificate the contradict the contradict that testificate the contradict that t

The retained attorney condemned the defendant to a wordiet of guilty on Count III by his strawman argument was conclusion on the jury: "If you can't come to a satisfactory conclusion on this document beyond a reasonable doubt... you have to acquit colonel Rodriguez" (T. 807). He thereby the acquired the converse, to the jury, to convict the defendant if they do "come to a satisfactory conclusion on this

The retained counsel failed to object to the regent on summation by the prosecutor as to Count III, whereby the jury was invited and instructed to convict the defendant Rodriguez, even though "there is no proof in this the colonal Rodriguez actually signed that document that makes no difference whatsoever. If you find, as I subwir you must that that signature was put on that document, ener, it got on there, with the knowledge, consent and reservation of colonel Rodriguez, then he is equally respeacible as if he had signed it himself." (T. 764). That was not based on the evidence and was a wholly in-There was no evidence in the whatever that the defendant had any knowledge that the certificate" existed, much less that it was signed name; there was no evidence that the defendant had was ented to that "end use certificate" in any regard, and of its parts; there was no evidence that the defendand there are no sign his name thereto, and there good an evidence of any agent-principal relation thereto beand the defendant Rodriguez under the substantive required for proof of such agency. The statements were begaty projudicial and wrong. The indictment charged that the ".... the cortificate", Covernment Exhibit 31, was signed by

The indictment did not

charge that the "end use certificate", Government Exhibit 31, was signed by someone else with the "authority, consent and knowledge" of the defendant Manuel Alfonso Rodriguez. This is not to suggest that if the indictment had made that latter allegation that it would have been a sufficient allegation of a violation of 18 U.S.C. 1001. The retained attorney failed to make any objections to any of the testimony and the tapes on the authority of United States v. Bruton, 391 U.S. 123 (1968).

There was ineffective assistance of counsel in violation of defendant's constitutional rights under every standard. Tollett v. Henderson 411 U.S. 258, (1973); McMann v. Richardson, 397 U.S. 759 (1970); United States v. Wight, 176 F. 2d 376 (2d Cir. 1949, cert. den 338 U. S. 950 (1950); United States ex rel Marcelin v. Mancusi, 462 F. 2d 36 (2d Cir. 1972), cert. den. 410 U. S. 917 (1973); and cases cited: United States ex rel Crispin v. Mancusi, 448 F. 2d 233, 237 (2d Cir.), cert. den. 404 U.S. 967 (1971); United States ex rel Scott v. Mancusi, 429 F. 2d 104, 109 (2 Cir. 1970), cert. den. 402 U.S. 909 (1971); United States v. Katz, 425 F. 2d 928, 930-31 (2 Cir. 1970); United States v. Silva, 418 F. 2d 328, 331-32 (2 Cir. 1969); United States v. Currier, 405 F. 2d 1039, 1042-43 (2 Cir.), cert. denied 395 U.S. 914 (1969); United States ex rel Maselli v. Reincke, 383 F. 2d 129, 132 (2 Cir. 1967); United States ex rel Boucher v. Reincke, 341 F. 2d 977, 981-82 (2 Cir. 1965);

Unified States v. Horton, 334 F. 2d 153, 155 (2 Cir. 1964); United States v. Carguilo, 324 F. 2d 795, 796-97 (2 Cir. 1963); on ted States v. Gonzales, 321 F. 2d 638, 639 (2 Cir. 1963); United States v. Durant, Second Circuit, Docket No. 76-1198, heided November 24, 1976; Lunz v. Henderson, 533 F. 23 1322 (2d Cir. 1976); United States v. Almestica, 2a Cir., Docket #76-1325, decided December 16, 1976; is . and v. Maggio, 544 F. 2d 1247 (5 Cir. 1977); Fitzgerald v. 1 1 11e, 505 F. 2d 1334 (5 Cir. 1975); Herring v. Estelle, 491 F. 2d 125 (5 Cir. 1974); McQueen v. Swenson, 498 F. 2d 207 (8th Cir. 1974); Garton v. Swenson, 20 21 2d 1137 (8th Cir. 1974); United States v. Moore, De F. 2d 355 (D.C. Cir. 1976); United States v. De Coster, d 1197 (D.C. Cir. 1973); Coles v. Peyton, 389 F. 4 4th (ir.) cert. den. 393 U.S. 849 (1968); Force v. United States, 432 F. 2d 730 (3rd Cir. 1970) (see Lanc); see also Von Moltke v. Gillies, 332 U.S. 708, (1947).

Point V

The conduct of the Government Agents and attorneys in surreptitiously interrogating the defendant Rodriguez under the circumstances without according him his Constitutional rights under the Fourth, Fifth and Sixth Amendments require that all evidence thereof including videotapes and audiotapes, be suppressed

The interrogation on May 15, 1976 of the defendant Rodriguez was carefully planned with and by the United States Attorney, Mr. Fiske, and Assistant United States Attorney Robert Gold, Government Agent Kelly, and others in the Bureau of Alcohol, Tobacco, and Firearms, since May 12, 1976 (T. 455, 456) as shown by the testimony of Government Agent Kelly (T. 455-457, 481-482, 311-312). Government Agent Kelly testified that the purpose of that set-up was to interrogate the defendant Rodriguez on the crimes as to which the investigation had focused on him so as to compel him to incriminate himself and to establish and provide the evidence of crime against himself, without allowing him to know that he was being interrogated by Government Agents for that purpose, and to arrest him (T. 459-461, 479-482). When the defendant Rodriguez was so brought to the Holiday Inn, he was taken into the Banquet Room (T. 309, 310). "After a brief introduction, we told the parties there that we were going to take Colonel Rodriguez, Mr. Celis, Mr. Michaelson, Mr. Tobacman into another room so we could get our business out of the way " (T. 313). The private room was at another part of the Holiday Inn, which had been set up, as aforesaid (T. 313). There were "approximately ten federal agents", all armed, in the motel in connection with this case, in addition to local police officers (T. 458, 332). The private room was occupied by at least two government agents, (Kelly, T. 313, and McInniney, T. 333, 458), and at least one police officer (T. 332) and at least one government informer or person working under the control and direction of Government

agents (Stagg, T. 313), and very likely another person working under the direction of the Government, Miguel Celis (T. 313), (see below, p. 46,47, and at least one New York City Police Officer, Detective Bill Irwin (T. 174). Inside the room, one agent,
Agent McNinney, stood near the door (T. 333, 458), apparently the only means of ingress and egress from that room. In the adjoining room were other Government agents surveilling the interrogation room with videotape and audiotape equipment and recordings, supra.

The defendant was at all times in the presence, control and custody of the Government agents. There is evidence showing that Miguel Celis was working for or under the direction of Government Agent Kelly. (T. 307, 310; Nagra tape recorder carried by Government Agent Kelly on May 15, 1976). At the trial, Government Agent Kelly exposed a fact which showed that Miguel Celis was working for or under the direction of the Government by his testimony as follows:

"What's to prevent these guys, Celis, from giving up anyone and telling us that this is Colonel Rodriguez, and us paying the money and then walking away and we don't know who we paid". (T. 307). (Underscoring added).

The underlined statement is police jargon to describe a situation in which an informer or a person arrested for a crime sets up another person, in this case Celis set up defendant Rodriguez, as part of his deal to be 'let off the hook'. The latter portion of Government Agent Kelly's testimony is more fully discussed below. The recording made by Government Agent Kelly on the Nagra recorder carried on his person at the time, or part of the time of the events at the Holiday Inn on May 15, 1976 reveals additional evidence to support this fact, wherein he records his own voice whispering an instruction and warning by Government Agent Kelly to Miguel Celis, as those two were apparently proceeding from the Banquet Room to that private interrogation room, as follows:

(In a whisper) "Kelly:

Miguel, I advise you ask the Colonel every guestion we talked about, understood!

Miguel: (Not intelligible).

Kelly: Just fabulous, just fabulous, very good.

Kelly: (In a louder voice) Ah, it's too crowded, too confused. Angelo is in there bang"

(This conversation appeared at Register Number 367-368 on a Toshiba, GT-810S Stereophonic Recorder-Player of the above described copy of the Nagra tape, as furnished by the Government to Gordon Lang, Esq. and was heard by the jury. This evidence indicates that Miguel Celis was then working with or under the direction of Government Agent Kelly in the Government's planned custodial, planned arest focused interrogation of defendant Rodriguez. The latter part of Government Agent Kelly's statement (T. 307), aforesaid, namely, "What's to prevent these guys, Celis, from giving up anyone and telling us that this is Colonel Rodriguez and us paying the money and then walking away and we don't know who we paid" (T. 307) is inconsistent with the actual facts shown above. The Government plainly had no intention of allowing anyone to receive any money and to walk out with any money. The only way any of those people were going to walk out of that room, as Government Agent Kelly testified above, was under formal arrest and in handcuffs, which is what happened (T. 335, 336). The evidence shows that a Government Agent and a police officer met the defendant Rodriguez, Miguel Celis, and Raymond Geraldo at Kennedy Airport, took them into the Government operated motor vehicle and drove to a place (T. 457, 310, 280) that was unknown to the defendant Rodriguez who had no knowledge, experience or familiarity with this country and with the New York area in particular. The defendant Rodriguez had only the

Government operated vehicle as the means of ingress, travel and egress. When he was brought to the Holiday Inn, at Westchester, he did not know where that was located and had no way of knowing where he was. His entrance and exit was totally within the control of the Government. The Government, by the United States Attorney, his Assistant United States Attorneys, Government Agents from the Alcohol, Tax and Firearms Bureau, including senior officers thereof both of this area and of the region, and local police from the City of New York and from Westchester County, had conferred at least one day, or more, prior to May 15, 1976, and had decided to effect arrests of other defendants in this case, and of this defendant Rodriguez whom they determined to surreptitiously interrogate and elicit incriminating statements from him without informing him that he was being interrogated by government agents, and without according him his rights under the Fifth and Sixth Amendments (T. 455-457, 479, 482, 311-312, 459, 461, 174). The Government Agents at all times outnumbered the defendant Rodriguez and at all times had the defendant in their power and control (T. 457, 312, 313, 393, 358, 336, 332, 333, 458, 335). The Government A, ents exercised their power and control over the defendant Rodriguez after he had been taken into the hotel by other Government Agents and police and directed and escorted the defendant Rodriguez into a rather small room in that hotel (T. 309, 310, 313) which was surreptitiously occupied by other Government Agents (T. 313, 333, 348), was surreptitiously surrounded by more Government Agents (T. 458, 332) and which had been prepared and set up to record visually and aurally, on videotapes and audiotapes (T. 311, 312) the surreptitious, affirmative, deliberate, planned, and focused interrogation of

the defendant Rodriguez which had been carefully prepared and rehearsed by the full array of Government power which included the United States Attorney for the Southern District of New York and one or more of his Assistants (T. 455-456, 457, 481, 482, 311, 312, 459-461, 479-482) in order to extract incriminating evidence from the defendant Rodriguez by means of surreptitious unwarned interrogation of the defendant Rodriguez (T. 459-461, 479-482). At that time, as the record shows, the Government investigation had fully focused on this defendant Rodriguez as to specific crime and the clear purpose of the massive preparations by the United States Attorney and his Assistants and other Government and police officials was to incriminate the defendant Rodriguez by the means and method of surreptitious, unwarned, aggressive, government initiated and government pursued interrogation. The government carefully selected and prepared the setting so that it would be an isolated place, and totally under the domination and control of the Government attorneys and agents, and to have the defendant Rodriguez similarly under their total control, custody and domination, which was so effectuated. The Government was not engaged in any generalized investigation of crime. The Government was then engaged and involved in a tightly and sharply focused criminal proceeding against the defendant Rodriguez for specific crimes. At that time, unless the Government admits that Celis was world

to for them and that he already had told the government that he had traced the signature of the defendant Manuel Alfonso Rodriguez on the so-called "and use certificate(s)" which were introduced at trial as Government Exhibits 11, 15, 19 and 31, the government would likely have had probable cause to arrest the defendant Rodriguez for the specific crime of violation of 18 M.S.C. Section 1001. The government intentionally postpoind the time of the defendant's formal arrest in the belief that the government could also postpone its duties under the constitution and evade the consequences for the violation of detendant's constitutional rights under the Fifth and Sixth Amendments. It could not do so. The conduct of the government prosecutors and agents in the circumstances violated the Constitutional rights of the defendant Rodriguez under the wifth and Sixth Amendments and requires that the evidence therefrom be suppressed. Miranda v. Arizona, 384 U.S. 430 (1966); coleman v. Alabama, 399 U.S. 1 (1970); Haley v. Ohio, 332 U.S. 594, 607 (1947); Lyra v. Denno, 347 U.S. 556 (1953); Orongo v. Texas, 394 U.S. 324 (1969); Massiah v. United States, 377 U.S. 201 (1964); Mathis v. United States, 391 U.S. 1 (1968); Kirby v. Illinois, 406 U.S. 682 (1972); United States v. Ash, 411 U.S. 300 (1973); Escobedo v. Illinois, 378 U.S. 478 (1964); United States v. Hayles, 471 F. 2d 788 (5th cir. 1973); Windsor v. United States, 389 F. 2d 530 (5th cir. 1968); United States v. corollo, 505 F. 2d 50 (5th cir. 1975); United States v. rholps. 443 F. 2d 246 (5th cir. 1971).

What the Supreme Court did by its rulings in Miranda V. Arizona, 381 U.S. 436 (1966) was to provide the means for the protection, effectuation and realization of both fifth and Sixth Amendment rights which were granted by the Constitution. when the authorities question a defendant in the circumstances described, the Supreme Court requires those authorities to advise the defendant of his constitutional rights. The failure of the authorities to conform to those constitutional requirements invokes a per so exclusion of statements made by a deferdant resulting from that violation. The authorities cannot take off their badges, conceal their identity, perpetrate a deception on a defendant in the circumstances set forth herein and then contend that the defendant's constitutional rights depend on them visibly pinning on their badges of authority and their deliberate deception in not pinning on their badges of authority precludes the application of the constitution and insulates them from the duty imposed by the Fifth and Sixth Amendments of the Constitution. The defendant's Constitutional rights are just as much violated by the failure of the authorities to abide by the Constitutional requirements of the Fifth Amendment and the rules announced by the Supreme court to protect, effectuate and realize those rights forthe people, whether the authorities expose their badges of authority or whether they conceal them, by deception, or any other means.

What is the difference in principle between the decep-

Laborate grant pury, or a court by the introduction of Laborate evidence or false testimony to either, which deprives a defendant of his fundamental right to due process of law, and the deception by the authorities whereby the authorities can reptitiously interrogate the defendant and elicit incriminating statements from him in the circumstances described.

It must be noted that the rationale of Miranda v.

Princeto, supra, does not require that the defendant know,

Princetor of conscious knowledge, that he is in custody;

The focus of determination of custody is not merely the

subjective feeling or belief of a defendant, but the intent

of the mathorities, which often is objectively demonstrable,

or in this case.

The Constitutional rights of the people are not so consessent or weak that they can be made to disappear, or that they can be rendered worthless, or helpless or that they can be evaded by deceptions practiced by the authorities. Instability, the Courts have spoken against such a dangerous proposition.

If deception could so easily evade the Constitumonal rights of the people, then why has the Supreme Court, and other courts, so consistently required the authorities to inform the people being subjected to such authorities of their constitutional rights. This country has always set its face against secret inquisition by secret police.

It was well stated, not so long ago that "The greatest dangers to liberty lurk in insidious encroachments by men of zeal, well meaning, but without understanding."

Olmstead v. United States, 277 U.S. 438, 439 (1928 (Dissent).

Point VI

The pre-arraignment interrogation by the Assistant United States Attorneys violated defendant's Federal Constitutional rights under the Fourth, Fifth and Sixth Amendments and all evidence thereof and derived therefrom must be suppressed

Deing taken to be arraigned on charges made by the government, ne was improperly sidetracked by government attorneys, and subjected to their interrogation. United States v. Duvall, 537 F. 2d 15, 23-26 (2d Cir. 1976); United States v. Marrero, 450 F. 2d 373, 376-379 (2d Cir. 1971); United States v. Middleton, 344 F. 2d 78 (2d Cir. 1965). Critical criminal proceedings and the prosecution of the defendant had already commenced, having commenced at least at the hotel; the adversary system was in full gear; the

government attorneys were already arrayed against him, con-Fronted him and set about to enmesh him by the power of the pro-ecution to compel him to incriminate himself. The defendand hodriquez had already requested the right to telephone his provident of the Republic of El Salvador, the Defense Minister, the Ambassador, and the United States Armed Forces Chief of since, as he informed the government agents, he did not know any counsel here, and that was his counsel in those circounces; Haley v. Obio, 332 U.S. 600-01, 607 (1947) (counor friend): Johnson v. New Jersey, 384 U.S. 719, 730 (1966) (outside assistance); People v. Washington, A.D. 2d _____, 388 N.Y.S. 2d 422, 424 (3rd Dept. 1976) (Sister or attorney). Those requests, under the Fifth and Sixth Amendments, should have been honored immediately; the requests precluded the government attorneys from interrogating the defendant. However, the defendant's requests were not honored and the interrogation was aggressively commenced and conducted by government attorneys. The defendants' rights under the Fifth and such Amendments were violated by the pre-arraignment interrogation conducted by the government attorneys and all evidence thereof and derived therefrom must be suppressed. Mirv. Arizona, 384 U.S. 436 (1966); Escobedo v. Illinois, 378 U.S. 478, 485 (1964); Kirby v. Illinois, 406 U.S. 682, 689-90 (1972); Massiah v. United States, 377 U.S. 201 (1964); Spano v. Nov York, 360 U.S. 315 ; Powell v. Alabama, 287 U.S. ; Coleman v. Alabama, 399 U.S. 1 (1970); McNabb v.

United States, 318 U.S. 332 (1943); Mallory v. United States, 354 U.S. 449 (1957).

Under the substantive test of voluntariness, the claimed post-arrest statement was not voluntary, even if Miranda warnings had been given, which is challenged here.

Von Molthe v. Gillies, 332 U.S. 708 (1947); Johnson v. New Jersey, 384 U.S. 719 (1966); Miranda v. Arizona, 384 U.S. 436 (1966); Johnson v. Merbst, 304 U.S. 458 (1938); United States v. Ash, 413 U.S. 300 (1973); People v. Andino, 362 N.Y.S. 2d 766 (Sup. Ct. N.Y. 1974).

that he kad no knowledge of Constitutional rights; that he had no familiarity with Miranda warnings and did not understand their meaning, that he was a stranger on a brief so-journ in a foreign land, that he was alone, held incommunicado and not allowed to contact anyone, and was subjected to the awesome powers of police control over his person and well-being, that the prosecution of the defendant had already commenced, that the forces of the government had been marshalled against him to deprive him of his liberty, that the government arrayed against him experienced lawyers, the Assistant United States Attorney (and the United States Attorney himself) and confronted him by experienced Assistant United States Attorneys geared up and directed to incriminate

initiated and parsued by aggressive and wilfull conduct.

Interest and the defendants arrested, the present information

The that only this defendant, Manuel Alfonso Rodriguez,

was subjected to 'interregation' by the government; plainly,

The government knew that of all of the defendants, this

defendant was most vulnerable, as set forth above.

The pre-arraignment interrogation report is challed as set forth in the affidavits of Charles Sutton sworn to repruary 11, 1977 and of Manuel Alfonso Rodriguez sworn to repruary 11, 1977 as not being a true or correct representation of what transpired. Untrustworthiness of the so-called statement, even if the prosecutors had complied with the defendant's rights under the Fifth and Sixth Amendments, which they did not, would preclude its introduction in evidence. Harris v. New York, 401 U.S. 222 (1970); Oregon v. Hars, 420 U.S. 714 (1975); Miranda v. Arizona, 384 U.S. 436 (1966).

The pre-arraignment interrogation report, as such, that inadmissible in evidence. It was handwritten by the Applicant United States Attorney, it was never signed, or orally acknowledged by the defendant, and it was not read to or by him. People v. Lebron, 46 A.D. 2d 776, 778 (2d Dept. 1974); People v. Joseph Kenny, 20 A.D. 2d 578, 579 (2d Dept. 1963); People v. Duffy, 23 A.D. 2d 699 (2d Dept. 1965).

Point VII

The failure of the trial court to render any preliminary instruction on the conspiracy count was plain error and reversible

The trial court wholly omitted to render any preliminary instruction to the jury on the conspiracy count at any time after the
first testimony was offered on the conspiracy count, and to instruct
the jury on the use and value of hearsay evidence on a conspiracy
count

"explaining clearly to the jury the requirement that the conspiracy itself and each defendant's participation in it must be established by independent non-hearsay evidence which must be given either prior to the introduction of any evidence or immediately upon the first instance of such hearsay testimony." <u>United States v. DeJesus</u>, 520 F.2d 288, 301 (5th Cir. 1975).

Point VIII

NON-

There was no independent, hearsay evidence which established that the defendant Rodriguez had any part whatever in the conspiracy charged in Count I which was consummated on May 5, 1976

The defendant Rodriguez was not in view at all prior to May 15, 1976 (T. 300, 310, 311; 258), the conspiracy charged in Count I had already been consummated as of May 5, 1976 with the filing of the documents described in Count II, III and IV. (T.450-452; 613). The admission of hearsay evidence after May 5, 1976 was plain error and requires reversal of the sentence.

Point IX

It was furdamental error denying the defendant a fair trial and due process of law to allow the admission of testimony to prove the conspiracy after the conspiracy had been consummated

The alleged conspiracy charged in Count I of the indictment

is a conspiracy to file allegedly false documents with the State Department. (2A-9A) The Government's own evidence shows that the allegedly false documents were filed on May 5, 1976, (T. 450-452, 613) at which time the conspiracy was consummated. Bufford v. United States, 272 F.2d 483, 486, n. 1 (9th Cir. 1959). The introduction and admission into evidence of testimony after May 5, 1976 allegedly offered in support of the consummated conspiracy was plain error and deprived the defendant of his fundamental right to a fair trial and to due process of law.

Point X

The Government is estopped to deny that there was no evidence to prove that the defendant Rodriguez signed the so-called, "end use certificate"

The prosecutor in his closing statements declared and admitted that:

"As to the substantive Count, Count 3, the end use certificate which Mr. Celis and Mr. Geraldo brought up from El Salvador on May 2d, there is no proof in this case that Colonel Rodriguez actually signed that document. We are not contending in the absence of that proof that he actually did in fact sign it..." (T764).

The Government is bound by its admission and is estopped to deny that there is no proof in this case that the defendant Rodriguez signed that document, namely, the so-called "end use certificate", Government Exhibit 31, which is described in and is the basis of the substantive count, Count III of the indictment (9A). The Philadelphia, Wilmington and Baltimore RR. Company v. Howard, 54 U.S. 307 (1851);

Davis v. Wakelee, 156 U.S. 680 (1894); Sturm v. Boker, 105 U.S. 312

(1892); Railway Co. v. McCarthy, 96 U.S. 258 (1877). The doctrine of collateral estoppel is applicable in criminal cases. Yates v. United States, 354 U.S. 298, 335 (1956); United States v. Oppenheimer, 242 U.S. 85.

Point XI

The statements of the prosecutor misstating the facts and stating matters as facts outside of the record deprived defendant of a fair trial and mandates a reversal

In his closing statements after admitting that there was no proof in the case that the defendant Rodriguez had signed the end use certificate upon which Count III was based, the prosecutor stated:

"If you find, as I submit you must, from this evidence that the signature was put on that document, however it got there, with the knowledge, consent and authorization of Colonel Rodriguez, then he is equally responsible as if he signed it himself" (T. 764).

There was in fact no evidence whatever, not even a scintilla of evidence that the defendant Rodriguez had any knowledge as to who placed that false "signature" on that "end use certificate", much less that it was done by someone with the "consent and authorization of Colonel Rodriguez" (T.764). This was a testimonial declaration by the prosecutor introducing to the jury matters that were not in evidence. United States v. Newman, 490 F.2d 139 (3rd Cir. 1974).

Similarly the prosecutor testified on his closing statement that the defendant Rodriguez knew prior to May 5, 1976 that the "end use certificate" would be filed with the State Department (T.765), and that defendant Rodriguez "agreed" with Mr. Geraldo (or anyone else) to provide the "end use certificate", which was the basis of

Count III (9A), for \$75,000 in cash, or for any amount (T.742). There was no evidence in the trial to authorize the prosecutor to declaim that

"the only way to get at the bottom of this kind of thing is precisely the way Agent Kelly did it in this case. ... That is not his job to say 'I am a treasury agent tell me more about this' ... that the use of undercover agents as Agent Kelly was in this case is a lawful proper indeed necessary indespensible technique of law enforcement if this kind of conduct is going to be rooted out and stopped" (T746, 747).

The prosecutor added his own evidence on summation when he declared that the "end use certificate" looked to him like it had a seal on it (T749). The prosecutor also declaimed that

'the existence of prior discussions with defendant Rodriguez about this whole scheme, amply overwhelmingly, demonstrates Colonel Rodriguez' knowledge that he was being paid \$75,000 for documentation that he signed the DSP-83 that he knew was false. It said right on the face of it, 10,000 Bushmaster submachine guns are being purchased for the national defense of El Salvador'. (T762).

There was no evidence that the DSP-83 was actually filled in, or that the defendant had read the reverse side from where his signature was allegedly placed at the time the signature was allegedly placed thereon. The prosecutor called for the conviction of the defendant on the basis that

"he has a moral guilt in regard to the documents described in Counts II, III and IV as to which he had no connection". (T766).

This latter declaration by prosecutor was improper, and deprived the defendant of his constitutional right to a fair trial and to due process of law. See, <u>United States v. Loschiavo</u>, 531 F.2d 659, 667 (2d Cir.1975).

It is fair to conclude that the jury convicted the defendant Rodriguez on a basis that was niether charged nor proved. Eaton v. Tulsa, 415 U.S. 697, 698-99 (1973).

"When a prosecutor misstates facts in his closing remarks or states facts outside of the record in such a way as to prejudice a defendant, a new trial is required. See United States v. Tucker, 267 F.2d 212 (3d Cir. 1959), where the prejudice is substantial, cautionary instructions will not preclude a reversal. See, e.g. Dunn v. United States, 307 F.2d 883, 886 (5th Cir. 1962); United States v. Bugros, 304 F.2d 177 (2d Cir. 1962); Government of Virgin Isles vs. Tumer, 409 F.2d 102, 103, 104 (3d Cir. 1969). If the cautionary instruction is not clear and direct enough to neutralize the prejudice to the defendant, a reversal is mandated. United States v. Leftowich, 461 F.2d 586, 590 (3d Cir. 1972)." United States v. Newman, 490 F.2d 139 (3d Cir. 1974).

Point XII

The indictment is invalid in that it alleges as a crime acts which under statute do not constitute a crime.

The trial court properly charged the jury that the only received crimes are those set forth by statute (T868). United States v. Gradwell, 243 U.S. 476, 478 (1917), United States v. Eaton, 144 U.S. 677, 687 (1891). The elements of a criminal offense are determined from the statute. The trial court read the statute 18 U.S.C. Section 1001, in part, to the jury (T890).

The indictment, the government's method of pleading, on the other hand, is not determinative of the elements of a federal crime. United States v. King, 521 F.2d 61 (10th Cir. 1975). This indictment included the allegation that in the con-

Spready count, Count I Overt Act Number 7 that:

"On or about May 2, 1976, the defendants Raymond Geraldo, Robert Michaelson, Dominick Cagianese, and Miguel D. Celis met at the Pepper Tree Restaurant, Mt. Kisco, New York and had a conversation concerning a cash payment to be made to the defendant Manuel Alfonso Rodriguez in return for the defendant Rodriguez facilitating the filing of false and fraudulent documents with the United States Department of State." (See also Overt Act Number 15)

Count III similarly charged as a crime the defendants

"...did...facilitate the making of...certain false, fictitious and fraudulent representations on a certificate dated April 22, 1976 on the official letterhead of the 'Estado Mayor General de la Fuerza Armada, San Salvador, El Salvador, S. A. bearing the signature of defendant Manuel Alfonso Rodriguez..."

Neither 18 U.S.C. Section 1001, nor 18 U.S.C. Section 2, nor 18 U.S.C. Section 371, nor the Gun Control Act of 1968, respectively include as a crime, the act of 'facilitating'. "'Facilitate' means 'to make easy or less difficult'. United States v. Surrow, 212 F.Supp. 837, 840 (E.D. Pa. 1962)." United States

V. Miller, 379 F.2d 483, 486 (7th Cir. 1967).

The trial court charged the jury as to the substantive

"charge certain of the defendants with having made, <u>facilitated</u> the making of and causing to be made certain false, fictitious or fraudulent statement..." etc. (T. 869-870).

The trial court read portions of the indictment to the jury which included the charge of "facilitate" as to both the

conspiracy count (T872, 873, 886) and as to the substantive count (T892), and included that act as an essential element of the crime charged (T893, 895).

The defendant Rodriguez was subjected to criminal liability upon facts which do not constitute any crime, Thompson v.

Douisville, 362 U.S. 199 (1960) and upon a "crime" not charged by statute. See, Eaton v. City of Tulsa, 415 U.S. 697-699 (1973).

POINT XIII

The indictment is insufficient on its face

The indictment as to both Count I and Count III is insufficient on its face. The charging provisions of the indictment fail to state the facts to identify the agreement allegedly made which purportedly violates the statutes cited and fail to set forth and identify the facts to show material falsity within the meaning of the statutes sized. The indictment under Count I merely characterizes as "false and fraudulent documents", four generalized forms, and fails to state the facts to show what it is that was allegedly "false and fraudulent", and to show that the same was material and capable of influencing the decision makers in the agency involved and perverted their function. The indictment under Count III is similarly deficient on its face. Hamling v. United States, 418 U. S. 87 (1973); United States v. Hess, 124 U. S. 483, 487 (1888); United States v. Simmons, 96 Ul S., 362-365 (1878); United States v. Clark, 412 F. 2d 885, 888 (5th Cir. 1969); Chappell v. United States, 270 F.2d 274, 276 (9th Cir. 1959); Hammerschmidt v. United States, 265 U. S. 182 (1924); United States v. Krause, 507 F. 2d 113 (5th Cir. 1975); United States v. Snider, 502 F.2d 645 (4th Cir. 1974).

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POINT XIV

There was no evidence that the allegedly, 'false statements' were material and could influence the agency decision makers.

There was no evidence presented at the trial to establish that the document at issue under Count III contained any materially false statement capable of influencing the agency decision makers and preverted their function.

United States v. Snider, 502 F. 2d 645 (4th Circ. 1974);

United States v. Bush, 503 F. 2d 813, (5th Cir. 1974);

Roland v. United States; 200 F. 2d 678 (5th Cir. 1953);

Weinstock v. United States, 231 F.2d 699 (D.C. Cir. 1956).

The testimony showed that the entire scheme was the bizarre creation of the Government and that in no respect could any agency of the Government be affected by the Government's own scheme and that not a single gun would ever (T664-666) be "sold" by anyone to anyone. The testimony shows that the (T680) "guns" never had an existence, were never manufactured, and were never even commenced to be manufactured, even by the (680-681) ordering of materials for the same. The testimony of the manufacturer was that even if the 'guns' had been manufactured, they would not be sold or delivered to anyone unless that (T664-666) someone had the necessary valid purchase authority and license/ the scheme was unreal and was a legal and factual impossibility. United States v. Oviedo, 525 F.2d 881 (5th Cir. 1976).

POINT XV

The trial court's instruction as to reasonable doubt were erroneous.

The trial court instructed the jury that it may convict the defendant:

"if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt " (T868).

Aiso, at 867:

"not proof to a positive certainty or beyond all possible doubt. If that were the rule, it would be practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to a mathematical computation. As a consequence, the law is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt."

This was reversible error in this case.

United States v. Shaffner, 524 F. 2d 1021 (7th Cir. 1975).

concept of reasonable doubt. This charge created a heavy weight in favor of conviction and demeaned and impugned the standard of reasonable doubt fundamental to defendant's constitutional rights to due process of law. In re Winship, 397 U.S. 358, 364 (1970).

POINT XVI

The introduction of mountains of hearsay testimony deprived defendant of a fair trial and violated his constitutional right to due process of law.

The trial was based upon and conducted upon hearsay testimony not only of the chief government witness, Agent Kelly, but of each of the government witness, which

meanay testimony was generally elicited by leading questions. (82-83SA)
The heartsay was additionally personally insulting, without any basis in fact to the defendant, out of his presence and small up in the minds of the jury, an overwhelming prejudice which no instructions, even if given, could overcome. These heartsay statements included the tape recordings which were played to and heard by the jury and included personal remarks that the defendant had killed people, that he was in the porket of other defendants, that he would not do anything without their say so, etc. The motion to strike the hearsay (2707) should have been granted. It was denied (T.725). The

Bruton v. United States, 391 U.S. 123 (1968).

POINT XVII

The introduction of the actual weapon submachine gun was prejudicial and reversible error.

The government introduced in evidence an (T234-236,690-691,661,678) agtual submachine gun in apparently operable formy. (T672, 675-7)was no valid material, or relevant basis for such introduction. The purpose was solely to inflame the jury and to prejudice the defendants. The testimony showed that no submachine guns were ever manufactured for and that no submachine guns were (T664-666)ever sold to any of the defendants or anyone else. The manufacturer testified that he did not even order any material from his suppliers in order to manufacture such submachine guns. (T. 678-684). The introduction of the submachine gun was obviously intended to give the appearance of reality to a scheme that was created, invented, manufactured and pushed along, solely by the government and solely for the purpose of creating criminality or the appearance thereof. It was reversible error. United States v. Kessler, 44 U. S. L.W. 1185 (1976).

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POINT XVIII

The government is estopped to use the DSP-83 and to allege that any statements therein are false.

was actually filled up and typed up at the time it was signed on the reverse side by the defendant. There was no evidence that the defendant ever saw, much less that he read the front side of that paper. The government conceded that the defendant could not speak English (T314).

The DSP-83 is imprinted in English with a Notice that the only consequence for false statements is that it "may result in denial of participation in United States exports", to wit:

"The making of any false statement, the concealment of any material fact, or failure to file the required information may result in denial of participation in maited States exports. Notarization is not required."

quences estops the government from claiming other consequences, by its failure to warn of those other consequences in the light of that affirmative statement. It is fair to suggest that that is a rule of the Department of State, which must be followed by the government. See, Vitarelli v. Seaton, 359 U. S. 535 (1958); see also, United States v. Bush, 503 F. 2d (5th Cir. 1974); United States v. Leonard, 524 F.2d 1076 (2d Cir. 1975).

POINT XIX

The electronic recordings of conversations violated defendant's constitutional rights

The government embarked on a deliberate scheme to use electronic recordings of defendants' conversations without any warrant, in violation of their constitutional rights.

POINT XX

The trial court failed to make a finding as a matter of law that the 'statements' allegedly false, were material as a matter of law.

The trial court was required to make a finding as a matter of law on the evidence presented whether the so called 'talse statements' were material within the bearing of 18 U.S.C. Section 1001 as a matter of law, and requires reversal of the convictions. Weinstock v. United States, 231 F.2d 699 (D.C. Cir. 1956); United States v. Snider, 502 F.2d 645 (4th Cir. 1974); Roland v. United States, 200 F.2d 673, (5th Cir. 1953).

POINT XXI

There was no evidence to support the charge that defendant Rodriguez was an aider and abetter.

There was no evidence to support a charge and abettor. There was no evidence as to who was the principal and what it was that was done by the defendant to be an aider and abettor. It was reversible error to so charge. United States v. Taylor, 464 F.2d 240 (2d Cir. 1974); United States v. Garquilo, 310 F. 2d 249 (2d cir. 1962); United States v. Barlow, 470 F.2d 1245 (1972); UnitedStates v. Howitt, 55 F. Supp. 372 (S.D.Fla. 1944); United States v. Gary, 447 F. 2d 907, 911 (9th Cir. 1971); Whire v. United States, 366 F.2d 474 (10th Cir. 1966); Morgan v. United States, 159 F.2d 85 (10th Car. 1947).

Point XXII

The prosecutor's statements violate the defendant's rights under the Fifth Amendment.

In his closing statements the prosecutor repeatedly asserted that the evidence referred to was "undisputed" (T.738, 739, 742, 746). These statements impugned the defendant's constitutional rights under the Fifth Amendment were uncorrected by the trial court. The convictions should be reversed. <u>United</u>

States v. Hall, 525 F.2d 1254 (5th Cir. 1976).

In his closing statements the prosecutor declared that the jury should "satisfy you" (T769) as to the claims of the defendant was plain error, was not corrected by the court when it was objected to, and requires reversal of the conviction. In re Winship, 397 U.S. 358, 362-364 (1970); Kibbe v. Henderson, 534 F.2d 493 (2d Cir. 1976).

The prosecutor's closing statements that Agent Kelly had a "sworn duty as an agent of the Treasury Department...to prevent this type of thing", and other remarks there (T745-747) were inflammatory, improper and prejudicial to the defendant's rights to a fair trial.

Point XXIII

The refusal of the trial court to charge that the failure of the government to call a witness in its control authorized an inference or assumption that his testimony would not have been helpful to it was reversible error.

The defendant Geraldo requested the charge from the trial court to the jury the failure of the government to call Stagg as a witness, who was in the control of the government, authorized the jury to infer his testimony would not have been helpful to it was reversible error. (See, T861) United States V. Di Re, 332 U.S. 581, 593.

The trial court at the outset of the trial granted the boon to the defendants to each have the advantage of any objections made at trial (T11, 12, Sept. 20, 1976).

CONCLUSION

The conviction should be reversed and the indictment should be dismissed.

Respectfully submitted,

CHARLES SUTTON, ESQ. Attorney for Defendant

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Dated: February 2, 1977

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

INDICTMENT

76 CR 503

DOMINICK CAGIANESE,
FRANK G. ALVAREZ,
IRWIN TOBOGMAN,
ROBERT MICHAELSON,
RAYMOND GERALDO,
MIGUEL B. CELIS, and
MANUEL ALFONSO RODRIGUEZ,

Defendants.

INTRODUCTION

- 1. At all times material to this Indictment, the defendant, DOMINICK F. CAGIANESE, was an American citizen employed as the Director of Aeronautics, Mott Haven Industries, Ltd., 439 Bruckner Boulevard, Bronx, New York.
- 2. At all times material to this Indictment, the defendant, FRANK G. ALVAREZ, was an American citizen employed by Mott Haven Industries, Ltd., 429 Bruckner Boulevard, Bronx, New York, as its Marketing Director for Latin America.
- 3. At all times material to this Indictment, the defendant, IRWIN TOBOGMAN, was an American citizen and self-employed businessman conducting his business affairs from his residence located at 415 East 52 Street, New York, New York.

4. At all times material to this Indictment, the defendant, RAYMOND GERALDO, was a self-employed businessman and an American citizen.

5. At all times material to this Indictment, the defendant, ROBERT MICHAELSON, was an American citizen employed as the President of Wittington Imports, Ltd., Great Neck, New York.

6. At all times material to this Indictment, the defendant, MIGUEL D. CELIS, was a self-employed businessman residing in San Salvador, El Salvador, Central America and was a citizen of that country.

7. At all times material to this Indictment, the defendant, MANUEL ALFONSO RODRIGUEZ, was the Chief of Staff of the Armed Forces of El Salvador, Central America, and a citizen of that country.

COUNT ONE

The Grand Jury charges:

I. THE CONSPIRACY

8. From on or about January 1, 1976 and continuously thereafter up to and including May 15, 1976, in the Southern District of New York and elsewhere, DOMINICK CAGIANESE, FRANK G. ALVAREZ, IRWIN TOBOGMAN, ROBERT MICHAELSON, RAYMOND GERALDO, MIGUEL D. CELIS and MANUEL ALFONSO RODRIGUEZ, the defendants, Howard Peters named herein as an unindicted co-conspirator but not as a defendant, and others to the Grand Jury unknown, unlawfully, willfully and knowingly did combine, conspire,

confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of Title 26, United States Code, Sections 5811, 5812, 5861(d) and (e) (Title II of the Gun Control Act of 1968) and of Title 18, United States Code, Sections 1001 and 2.

II. OBJECTIVES OF THE CONSPIRACY

- 9. The objective of the conspiracy was to secretly sell weapons, munitions and other implements of war to buyers in the United States in a manner designed and intended to conceal from the United States Department of State and the United States Department of the Treasury the true identities of the buyers.
- 10. In order to attain their objective, the members of the conspiracy also agreed to seek to prepare and file with the United States Department of State certain false and fraudulent documents intended to create the false and misleading appearance that certain weapons and munitions were to be purchased by foreign countries for the exclusive use of their armed forces in their national defense.

III. MEANS OF THE CONSPIRACY

- 11. Among the means by which the defendants would and did carry out the said conspiracy were the following:
- (a) Between, on or about March 20, 1976 and May 15, 1976, the defendants prepared, facilitated the preparation of, and caused to be prepared certain false and fraudulent documents

including: (i) an official United States Department of State

Form DSP-5, entitled "Application/License for Permanent Export

of Unclassified Implements of War ..."; (ii) a certificate, dated

April 22, 1976, bearing the signature of the defendant Colonel

Manuel Alfonso Rodriguez; (iii) a copy of a purchase order for

10,000 submachine guns and 1.5 million rounds of ammunition,

dated May 3, 1976, signed by Howard Peters as purchasing agent

on behalf of San Pan Trading Corporation; and (iv) a United States

Department of State, Office of Munitions Control, Form DSP-83,

entitled "Consignee Purchaser Transaction Statement" signed by

the defendant Colonel Manuel Alfonso Rodriguez and bearing his

official government seal.

(b) On or about May 5, 1976, the defendants filed, facilitated the filing of, and caused to be filed with the United States Department of State the false and fraudulent documents referred to in Subparagraphs 11(a)(i), and (iii) above.

OVERT ACTS

In furtherance of said conspiracy and in order to accomplish its objectives, the defendants committed the following overt acts, among others in the Southern District of New York and elsewhere:

- 1. On or about March 20, 1976 the defendant ROBERT MICHAELSON travelled to the Pepper Tree Restaurant, Mt. Kisco, New York in order to meet and negotiate with prospective buyers of weapons, munitions and other implements of war.
- 2. On or about March 21, 1976 the defendant RAYMOND GERALDO travelled to the Pepper Tree Restaurant, Mt. Kisco, New York and had a conversation concerning the sale of certain weapons, munitions and other implements of war.
- 3. On or about March 22, 1977 the defendants

 DOMINICK CAGLIANESE and RAYMOND GERALDO met at the Pepper Tree

 Restaurant, Mt. Kisco, New York and had a conversation concerning arrangements to obtain from an official of a foreign government false and fraudulent documents to be filed with the United States Department of State.
- 4. On or about March 27, 1976, March 29, 1976 and April 14, 1976, at the Pepper Tree Restaurant, Mt. Kisco, New York, the defendants DOMINICK CAGIANESE, FRANK G. ALVAREZ, RAYMOND GERALDO and ROBERT MICHAELSON had conversations concerning an initial sale of 10,000 submachine guns for a price of \$2,800,000.
- 5. On or about April 1, 1976, the defendant DOMINICK CAGIANESE travelled to the vicinity of Winston-Salem, North Carolina in order to observe and participate in a test firing

demonstration of a "Bushmaster" submachine gun.

6. In or about April 1976, the defendant RAYMOND

GERALDO travelled to Central America for the purpose of obtaining a false and fraudulent certificate from an official of a Central American country.

7. On or about May 2, 1976, the defendants RAYMOND

GERALDO, ROBERT MICHAELSON, DOMINICK CAGIANESE and MIGUEL D.

GERALDO, ROBERT MICHAELSON, DOMINICK CAGIANESE and MIGUEL D.
CELIS met at the Pepper Tree Restaurant, Mt. Kisco, New York, and had a conversation concerning a cash payment to be made to the defendant MANUEL ALFONSO RODRIGUEZ in return for the defendant RODRIGUEZ facilitating the filing of false and fraudulent documents with the United States Department of State.

8. On or about May 3, 1976 the defendants FRANK
G. ALVAREZ, MIGUEL D. CELIS and RAYMOND GERALDO met at the offices
of Mott Haven Industries, Ltd., 429 Bruckner Blvd., Bronx, New
York and had a conversation concerning the preparation of false
and fraudulent documents to be filed with the United States
Department of State.

9. On or about May 4, 1976, the defendants FRANK G. ALVAREZ, MIGUEL D. CELIS and RAYMOND GERALDO met at the offices of Mott Haven Industries, Ltd., 429 Bruckner Blvd., Bronx, New York, and had a further conversation concerning arrangements to file certain false and fraudulent documents with the United States Department of State.

10. On or about May 5, 1976 the defendant FRANK G.
ALVAREZ directed one of his employees to deliver certain false and fraudulent documents to the United States Department of State, Washington, D. C.

11. On or about May 14, 1976 the defendant FRANK G. ALVAREZ Placed a telephone call from the offices of Mott Haven Industries, Ltd. to El Salvador, Central America. 12. On or about May 14, 1976, the defendant FRANK G. ALVAREZ placed a telephone call from the offices of Mott haven Industries, Ltd., to the United States Department of State, Washington, D. C. 13. On or about May 15, 1976, the defendants MANUEL ALFONSO RODRIGUEZ, MIGUEL D. CELIS, RAYMOND GERALDO, IRWIN TOBOOMAN, ROBERT MICHAELSON and FRANK G. ALVAREZ met at the holiday Inn, Mt. Kisco, New York and discussed their plan to sell weapons, munitions and other implements of war to buyers in the United States. 14. On or about May 15, 1976, at the Holiday Inn, Mt. Kisco, New York, the defendants MANUEL ALFONSO RODRIGUEZ and MIGUEL D. CELIS received the approximate sum of \$75,000 in cash for having provided, and having agreed to provide certain false and fraudulent documents filed and to be filed with the United States Department of State. 15. On or about May 15, 1976, at the Holiday Inn, Mt. Risco, New York, the defendants ROBERT MICHAELSON and IRWIN TOBOOMAN received the approximate sum of \$25,000 in cash for naving facilitated the preparation of false and fraudulent documents filed and to be filed with the United States Department of State. (Title 18, United States Code, Section 371). - 7A -

The Grand Jury further charges:

On or about May 5, 1976, in the Southern District of New York and elsewhere, DOMINICK CAGIANESE, FRANK G. ALVAREZ, IRWIN TOBOCMAN, ROPERT MICHAELSON, RAYMOND GERALDO, MIGUEL D. CELIS, and MANUEL ALFONSO RODRIGUEZ, the defendants, in a matter within the jurisdiction of a department or agency of the United States, to wit, the United States Department of State, unlawfully, wilfully and knowingly did make, facilitate the making of, and cause to be made certain false, fictitious and fraudulent statements and representations on a United States Department of State Form DSP-5, entitled, "Application/ License for Permanent Export of Unclassified Implements of War ... " that 10,000 "Bushmaster" submachine guns having an approximate value of \$2,550,000 together with 1.5 million rounds of ammunition for the said submachine guns were to be exported to the nation of El Salvador, Central America for use in El Salvador's national defense, whereas, in truth and in fact, the defendants then and there well knew that the said 10,000 "Bushmaster" submachine guns were to be sold to individuals in the United States at a price of approximately \$2,800,000 and further that the 1.5 million rounds of ammunition were to be sold to the same individuals in the United States.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT THREE

The Grand Jury further charges:

On or about May 5, 1976, in the Southern District of Now York and elsewhere, DOMINICK CAGIANESE, FRANK G. ALVAREZ, TRWIN TOBOGMAN, ROBERT MICHAELSON, RAYMOND GERALDO, MIGUEL D. CELIS, and MANUEL ALFONSO RODRIGUEZ, the defendants, in a matter within the jurisdiction of a department or agency of the United States, to wit, the United State: Department of State, unlawfully, willfully and knowingly did make, facilitate, the making of, and cause to be made certain false, fictitious and fraudulent statements and representations on a certificate dated April 22, 1976 on the official letterhead of the "Estado Mayor General De La Fuerza Armada, San Salvador, El Salvador, C.A.", bearing the signature of the defendant Manuel Alfonso Rodriguez, that 10,000 "Bushmaster" submachine guns and 1.5 million rounds of ammunition for said submachine guns were to be used by the armed forces of El Salvador and would not be re-exported to any third party whereas, in truth and in fact, the defendants then and there well knew that the said 10,000 "Bushmaster" submachine guns and the 1.5 million rounds of ammunition were to be sold to individuals in the United States.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about May 5, 1976, in the Southern District of New York and elsewhere, DOMINICK CAGIANESE, FRANK G. ALVAREZ, IRWIN TOBOGMAN, ROBERT MICHAELSON, RAYMOND GERALDO, MIGUEL D. CELIS, and MANUEL ALFONSO RODRIGUEZ, the defendants, in a matter within the jurisdiction of a department or agency of the United States, to wit, the United States Department of State, unlawfully, willfully and knowingly did make, facilitate the making of, and cause to be made certain false, fictitious and fraudulent statements and representations on a purchase order, dated Way 3, 1976, from San Pan Trading Corporation, 3 Wren Drive, Woodbury, New York, to Mott Haven Industries, Ltd., 429 Bruckner Boulevard, Bronx, New York, that 10,000 machine guns at a price of \$245 each together with 1.5 million rounds of ammunition were to be exported to El Salvador, Central America, whereas, in truth and in fact, the defendants then and there well knew that the 10,000 machine guns were to be sold to individuals in the United States for approximately \$2,300,000 and further that the 1.5 million rounds of ammunition were to be sold to the same individuals in the United States.

(Title 18, United States Code, Sections 1001 and 2.)

FOREMAN

/s/ Rbert B. Fiske, Jr. ROBERT B. FISKE, JR. United States Attorney

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62 - CERALDO), 03-MICHALISON, 04-TOBOCMAN, 95 (AGTANSES, 06-ALVAREZ-07-GELIS
5/16/76	Complaint filed, to retain own counsel. Defendant remanded into the custody of U.S. Marshal in lieu of \$3,000,000 cash or surety. Indictment filed, 70 Cr. 503
5-27-76	
	for motions, Bail cont'd, as fixed in the amount of
	\$3,000,000. Deft. remanded. Case assigned to Duffy, J. Brieant, J.
5-27-76	beft. (atty. present) intrepreter Norma Seltzer (sworn)-Decision Reserved on deft's oral application for reduction of bailDUFPY.J.
05-21-16	Filed memorandum and order that the application for a reduction of bail is denied burfy.1.
6-2-76	Filed notice of appearance by C. Joseph Hallinan 1251 Ave. of Americas NYC Pre-trial conference held and concluded. 8-15-76 last day to file motions trial date 9-20-76 Duffy, J.
H +,*to = 20,	restrial conference held and concluded. Trial to commence 3-8-26-76 E 1 cept. 20,1070 DBFTY, J.
09-0 16	Filed bill of particulars.
	C) V/ EV

M. MODRIGUEZ: V EXCEDENCE OF AT filed GovLs proposed examination of prospective jurors All counsel present. TRI L BEGUN with jury. case adjd to 9-21-76 5 R 106 6 3

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D. C 102 Criminal Continuation Sheet

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PROCEEDINGS DUFFY, J
Filed Deft's Notice of Appeal to USCA 2nd Circuit from Judgment filed 11-22-76. mailed copy to Biaggi, Ehrlich & Lang, 299 Broadway NYC 100 attys for deft. and copy to US Atty.
Filed Judgment (Atty. C. Joseph Hallinan, Jr., present) The defendant
Count 1 . FIVE (5) YEARS on count 3. Prison sentence imposed on count 3 is to run CONSECUTIVELY to sentence imposed on count 1 The United States Attorney is to inform the Immigration and Naturalization Service of this action and to suggest appropriate steps to be taken by them to make sure the defendant never return
to this country after service of this sentence. Counts 2 and 4 were dismissed by the Court by Order dated October 6, 1976. DUFFY, J Entered on-12-1-76.
Filed Temporary commitment dated:5-16-76.JACOBS. U.S. MAG.
Filed transcript of proceedings dated
Filed notice that original record on appeal has been certified and and transmitted to U.S.C.A.
Filed Notice that 1st supplemental record on appeal has been certifi and transmitted to USCA 2nd Circuit this day.
Filed petition and writ of h/c for the purpose of confining deft at M.C.C. 150 Park Row NYC***transportation to be paid by deftRet. 1-6-77****Duffy,J(Certified copies to U.S.M.)
6 Filed transcript of preceedings dtd: 11/23/76
Filed stip.& order that Biaggi, Ehrlich & Lang are substituted as atty's in place of C. Joseph Hallinan, Jr. as of 12-1-76 Duffy, J
Filed transcript of record of proceedings, dated 9/20/16
Filed notice of motion for an order granting a writ of habeas corpus, vacating the judgment etc
Filed memorandum of law.
Filed Stip and order adjourning deft's motion returnable 2-15-77 to
2-22-77.So Ordered.DUFFY, J
Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A. this 24th day of Feb. 77
Filed notice that the supplemental record on appeal has been certified and
Filed notice that the supplemental record on appeal has been certified and
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CHARGE OF THE COURT

Judge Duffy

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THE COURT: Ladies and gentlemen, now that the testimony is over and the arguments are over, the time has come for you and for me to do our part in the administration of justice in this case.

Counsel for the government and counsel for the defendant have been seeking over the past few days to guide us in our job and doing justice in this case. Each has presented his own interpretation of the testimony. Now it is my province to instruct you as to the law and you must accept my instructions as to that.

It is your function to determine the facts and your decision on the facts that is final and conclusive.

In considering the evidence and determining the facts in this case, you must lav aside any question of sympathy. It is your duty as well as mine to administer justice fairly and impartially. In so doing you must be quided solely by the law and the evidence, and neither you nor I can permit our conclusions to be affected by sympathy or suspicion.

You are to discharge your duty in an attitude of complete fairness and impartiality, and, as I emphasized

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when you were chosen as jurors, without bias or prejudice, for or against the government or the defendants as parties to this controversy.

The case is important to the government since the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to each defendant who is charged with a serious crime.

Before I turn to the indictment with which we are concerned here, there are a few general observations that I would like to make.

I instructed you at the very start of this case that your important function during the proceeding of taking testimony would be to listen carefully to each witness as he testified, to observe him, to watch his demeanor. It has been evident to me, and I think to all counsel, that you followed these instructions, so now you are prepared to undertake your final duty, and in the discharge of that duty you perform a very high duty of citizenship.

and gentlemen, you are the sole and exclusive judges of the facts. You pass on the weight of the evidence, you determine the credibility of the witnesses, you resolve such differences as there may be in the testimony and you, members.

of the jury, draw whatever reasonable inferences that you believe are warranted by the facts as you determine them.

It is your recollection of the facts that governs. Should that recollection differ from that of the lawyers or from mine, please disregard anything that we have said as far as the facts are concerned. Don't disregard the arguments, the inferences that the attorneys seek to draw, but if your recollection is different from that of theirs or mine, your recollection governs.

If you want any testimony in the case read back to you, that will be done at your request. The forelady will receive some note paper and pencils. Just write me a note and it will be done. Of course, you may also see the exhibits.

You are to consider only the facts that have been developed at this trial. You are not to be influenced by anything that you have read about criminal cases generally or that you might have seen on T.V. or heard. It is only what you heard here that counts.

* At times during the trial I have been called upon to make rulings on matters of law. I might have sustained objections or overruled objections, and so on. Don't concern yourselves with my reasons for doing these things. Those are purely legal matters.

the bench or in the robing room, sometimes at the request of one of the attorneys, sometimes at my request. Those conferences concern purely matters of law or logistics. They are of no concern to you.

oither side because of requests for such conferences. If during the trial I have indicated in my questions or my rulings anything which might indicate or lead you to believe that I favor one side or the other, please disregard it.

Any questions of mine or rulings were intended purely for clarification.

You have heard the summations of counsel. If you believe that counsel stated something as to which there is no evidence, you may disregard that part of what he said. Statements of counsel, as I told you before, are not evidence. They are arguments of advocates, not evidence.

Ouestions are not evidence. If any answer came from a witness and was stricken by me, I want you not to spisider that evidence at all. Take out your mental eraser and just take it out of your mind. The evidence is the answers of the witness as you recall them, the testimony they gave and the exhibits which were received into evidence.

Similarly, you are to treat stipulations of the

parties as real evidence, for both parties have agreed to the truth of the facts of those stipulations.

During the trial you were premitted to read the transcripts of taped conversations. The transcripts before you are in evidence, but they are intended merely as an aid to you. The tape and the videotape, you may have heard something which the transcripts do not contain. You may certainly hear and see the tapes again, if you so desire.

You have heard the testimony. How do you determine what weight to give it? How do you determine whether you are going to believe it or not? You heard it said that you are supposed to use your common sense. Thank you should do.

You saw the witnesses. How did their testimony impress you? Did they appear to be testifying honestly and frankly? In evaluating their testimony and their credibility, apply your common sense and experience, just the same way as you would in determining an important matter in your own lives.

. In determining whether you have been given a true picture of the situation or not, you may and you should consider the witness' demeanor, his lack of candor or his candor, his ability to express himself, his possible bias, strength of recollection, the accuracy of recollection.

You may also consider whether a witness has a possible interest in the outcome of this case. This does not mean a witness necessarily will testify falsely because he has an interest. It is merely a factor that you ought to consider.

Let me give you an example. The law enforcement agent who testified here might be said to have an interest in the case. It is a case that he investigated and presented. You may consider that and give it whatever weight you believe it should have. The fact that a witness is an employee of the government does not mean that you should give his testimony any greater or lesser weight than you do for any other witness. His testimony is to be scrutinized by you in the same manner as that of any other witness.

I charge you that the government here is merely one party to this case, and they are to be considered in an afferent light than any other party to a law suit.

Counsel for the government is to be considered in no different light than counsel for the defendants, or may other litigant. The fact that the government is a party entitles it to no greater or lesser consideration than accorded any other party in a lawsuit.

to the use by the Bureau of Alcohol, Tobacco & Firearms of

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the use of an undercover event or agents and of informants.

Joseph Kelly was acting in a undercover capacity and he was an agent. You may consider Vincent Coppola an informant.

Whatever one thinks of undercover agents or informants, the government uses them in order to get leads about those who are violating the law.

Whether one disapproves of this or not is really beside the point, providing that such did not impinge upon the rights of the defendant. Such services are not forbidden by law, and you are not asked to determine whether or not you agree with the policy which permits the use of such agents or informants.

credibility: Credibility is one of those nice lawyers words. It means simply do you believe the witness or not. In weighing credibility you should consider whether a particular witness' testimony is supported or whether it is contradicted by other testimony which you believe to be true.

If you find that a witness has made a material masstatement or even lied here with the intention of mistending you or others, you may disregard that part of the witness' testimony or you may disregard it all, or you may pack and choose and accept that part which you believe, that part which you find to be reliable, that part which you

choose to believe and disregard the rest.

All of these things you must consider in judging the credibility, believability, and in figuring out where the trust lies.

In considering the evidence, it is the quality of the evidence that counts, not the quantity. It is not

of the evidence that counts, not the quantity. It is not the number of witnesses, it is not the number of exhibits. It is the quality of the evidence that counts.

Generally, if it is particularly within the

Generally, if it is particularly within the power of a party to produce a witness who could give material information, material testimony, on an issue in the case, failure to call a witness may give rise to an inference that the witness' testimony might be unfavorable to that party. But whether that inference will be made is up to you to decide. You are free not to do so.

If the witness is equally available to both sides, then you may, but again need not, draw an inference against either or both of the parties.

If you find that it would be merely cumulative of repetitive, you can consider that also. A word of caution: You must always bear in mind that the law does not impose on a defendant in a criminal case the burden of calling any witness or produce any evidence. It is important that you remember that.

During my charge you will hear me refer at times to direct evidence and circumstantial evidence. It may be well for me to start off by explaining the difference between direct evidence and circumstantial evidence.

Direct evidence is something that a witness knows from what he saw, what he heard, what he observed, what he knows of his own knowledge, something which comes to him by virtue of his senses directly.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to the conclusion that the disputed fact has been established. Circumstantial evidence, if helieved, is of no less value than direct evidence, for an either case you must be convinced beyond a reasonable doubt of the quilt of any defendant.

stantial evidence is. Let us assume that you came in this morning, it was a beautiful day out, and the shades were all drawn and you could not see out the window. After a while somebody comes walking in with a soaking wet raincoat.

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A short time thereafter somebody comes in with an umbrella that is dripping wet. From this you could conclude that it is now raining. That is all there is to circumstantic evidence. You infer on the basis of reason and experience from established facts some other fact.

Let me give you another specific example of what I mean. If you find that a person, a defendant, upon being questioned by a law enforcement agent made a deliberate misstatement, then you may consider that as circumstantial evidence as to what was on his mind. You may consider it possibly as a consciousness of guilt.

Before we consider the precise charges, let me take care of a couple of other preliminary matters.

The indictment returned by the grand jury contains two memorate types of counts or charges. The first count, the conspiracy count, charges that the defendants on trial, along with certain others, conspired to violate the Gun Control law and to make false and fraudulent statements to the Department of State concerning the purchase of guns.

the other counts, which I will refer to as the substantive counts, charge that particular defedants actually violated these laws by making the false statements.

Certain defendants who were named in this case were severed from this trial and have not been tried before

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you. You are not to concern yourself with the reasons for such severance. The reasons are many and varied. Do not try to speculate on that. You have enough to do without speculation on a thing like that.

Certain persons who the government alleged were also not accused in this case as defendants but were named as co-conspirators, that is not to be considered by you in your deliberations, except insofar as you may consider questions of credibility.

No inferences should be drawn by you because persons are included or omitted from an indictment.

I have from time to time tried to suggest to you during this trial that guilt is personal. The guilt or innocence of each defendant here on trial must be determined with respect to him solely on the evidence against him or the lack of evidence.

The charges against him stand or fall on the proof or lack of proof against him and not on the proof against someone else.

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apply in every criminal case and to which I made some references at the beginning of this case. I will repeat them now.

The indictment is merely an accusation, it is

guilt. No weight whatsoever is to be given by you to the fact that an indictment was returned against a defendant.

Each defendant here pleaded not guilty. The government has the burden of proof, proof beyond a reasonable doubt, of each of the charges alleged in the indictment.

A defendant does not have to prove his innocence.
On the contrary, he is presumed to be innocent of the
accusations contained in the indictment. The presumption
of innocence was in his favor throughout this entire trial,
it is in his favor right now, even as I instruct you, and
remains during the course of your deliberations in the
jury room.

The law presumes that a defendant who has bleaded not quilty is innocent of the crime with which he is charge. He begins the trial with a clean slate. The government having made the charge must prove it beyond a reasonable doubt.

The burden of proof never shifts. It remains the the government throughout the trial. A defendant is not called upon to prove his innocence. Since the burden is on the government to prove the accused guilty beyond a reasonable doubt of every essential element of the crimes charged, the defendant has the right to rely upon the failure

of the prosecution to establish that proof. The defendant may also rely upon evidence brought out on cross examination of the government witnesses.

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The law does not impose upon any defendant the duty of producing any witness. There are many reasons why a defendant may decide not to testify. He may feel that because of strain or tension he would not be a calm witness, he might be embarrassed by his lack of education, by his inability to speak well in front of a group of people.

You are to draw absolutely no inference from any defendant becoming a witness or not.

I remind you once more: A defendant may rely upon the presumption of innocence and need do nothing more. The presumption of innocence to which I referred is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

I have used the term a number of times "beyond a reasonable doubt." What does it mean? The words almost define themselves.

It is a doubt founded in reason, arising out of the evidence in this case or the lack of evidence. It is a doubt which a reasonable person would have, after carefully weighing all the evidence. A reasonable doubt

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is a doubt which appeals to your reason, your judgment, your common sense, your experience. It is not a caprice, it is not a whim, it is not speculation, conjecture or suspicion, it is not an excuse to avoid what one might consider an unpleasant duty. It is not sympathy.

If after a fair and impartial consideration of all the evidence you can candidly and honestly say that you are not satisfied of the guilt of the defendant, if you have such a doubt as would cause you as a prudent person to hesitate before acting in a matter of importance, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, after an impartial and fair consideration of all the evidence, if you can candidly and nonestly say that you do have an abiding conviction of the defendant's guilt, such conviction that you would be willing to act on such a conviction, that you would do an important matter in your own life, then you have no reasonable doubt; and under such circumstance it is your duty to convict.

"Doe final word. Proof beyond a reasonable doubt is not proof to a positive certainty or beyond all possible doubt. If that were the rule, it would be practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its

nature is not susceptible to a mathematical computation.

As a consequence the law is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

except those that are defined and created by the statute or the laws written by Congress. In this case and in all others, the charges, the accusations made against the defendants, are made under certain federal laws. I don't believe it necessary for you to know the exact words, of these laws. Nevertheless, I think it would be a help for your background in your later consideration to give you a basic description of the laws that are involved in this case.

for any person to transfer an automatic weapon within the United States, unless he or she has filed with the Secretary of the Treasury an application for such transfer and received permission from the Secretary of the Treasury. It also requires if it is being exported from the country that an export license be obtained from the Department of State.

Title 18, Section 1001, of the United States

Code, makes it unlawful for any person to make a false state

ment within the jurisdiction of any department or agency of

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the United States.

In order to convict the defendants, it is not necessary that you find that they conspired to violate -both sections. It is sufficient if you find the defendants conspired to commit acts which if done would have violated either one of these statutes.

Count 1, the so-called conspiracy count, charges two defendants and others with conspiring and agreeing among themselves and with other persons to commit certain crimes against the United States, one, by agreeing to secretly sell weapons, munitions and other implements of war to certain buyers in the United States in a manner designed and intended to conceal from the United States Department of State and the United States Department of the Treasury the true identity of the buyers, and, also, two, by agreeing to seek and to prepare to file with the United States
Department of State certain flase and fraudulent documents intended to create the false appearance that certain quantities of weapons and munitions were to be purchased foreign countries for their exclusive use by the Armed Porces in their national defense.

The second, third and fourth counts of the indictment are substantive counts and charge certain of the defendants with having made, facilitated the making of and

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causing to be made certain false, fictitious or fraudulent statements and representations to the United States Department of State in connection with this alleged plan to sell, secretly sell, weapons, munitions and other implements of war to certain buyers in the United States by misrepresenting to the State Department that 10,000 Bushmaster submachine guns and 1.5 million rounds of ammunition were to be purchased by the Republic of El Salvador, located in Central America, for the exclusive use of the Armed Forces of El Salvador in its national defense, when it is alleged in fact the defendants were planning to sell the said machine guns and ammunitic to buyers in the United States.

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I mentioned to you the difference between Count

1, the conspiracy count, and any substantive count. A

conspiracy to commit a crime is an entirely separate and

different crime from the substantive crime which may be the

object of the conspiracy.

The essence of the crime of conspiracy is an agreement or understanding to violate the law. Thus, if a conspiracy exists, even if it should fail in its purpose, it is still punishable as a crime. Congress has made a conspiracy or a concerted action to violate the federal law a crime entirely separate, distinct and different from a violation of law or laws which may be the object of the

conspiracy. Against this background, I now turn to a consideration of the specific counts of the indictment.

Let me consider first Count 1, since the essential elements contained therein are different than those in the substantive counts.

Count 1 reads:

The Grand Jury charges:

From on or about January 1, 1976 and continuously thereafter, up to and including May 15, 1976, in the Southern District of New York and elsewhere, Dominick Cagianese, Frank G. Alvarez, Irwin Tobocman, Robert Michaelson, Raymond Geraldo, Miguel Celis and Manuel Alfonso Rodriguez, the defendants, Howard Peters named herein as an unindicted co-conspirator but not as a defendant, and others to the grand jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violation of Title 26, United States Code, Sections 5811, 5812, 5861(d) and (e) (being parts of Title 12 of the Gup Control Act.of 1968) and of Title 18, United States Code, Sections 1001 and 2.

The objective of the conspiracy was to secretly sell weapons, munitions and other implements of war to buyers in the United States in a manner designed and intended

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to conceal from the United States Department of State and the United States Department of Treasury the true identities of the buyers.

In order to attain their objective, the members of the conspiracy also agreed to seek to prepare and file with the United States Department of State certain false and fraudulent documents intended to create the false and misleading appearance that certain weapons and munitions were to be purchased by foreign countries for the exclusive use of their armed forces in their national defense.

Among the means by which the defendants would and did carry out the said conspiracy were the following:

May 15, 1976, the defendants prepared, facilitated the preparation of and caused to be prepared certain false and fraudulent documents including: (i) an official United States Department of State Form DSP-5, entitled Application/License for Permanent Export of Unclassified Implements of War; (ii) a certificate, dated April 22, 1976, bearing the signature of the defendant Colonel Manuel Alfonso Rodriguez; (iii) a copy of a purchase order for 10,000 submachine guns and 1.5 million rounds of ammunition dated May 3, 1976, signed by Howard Peters as purchasing agent on behalf of San Pan Trading Corporation; and (iv) a United States

Department of State, Office of Munitions Control, Form
DSP-83, entitled Consignee Purchaser Transaction Statement
signed by the defendant Colonel Manuel Alfonso Rodriguez
and bearing his official government seal.

(b) On or about May 5, 1976, the defendants filed facilitated and filing of, and caused to be filed with the United States Department of State the false and fraudulent documents referred to in Subparagraphs -- the ones I just read to you.

MR. FISKE: Your Honor, except the fourth document. The indictment does not charge that the DSP-83 was actually filed.

THE COURT: I agree. I am sorry. I misspoke.
I did misspeak.

DSP-83 was never filed, according to the indictment.

In order to convict a defendant on trial, the government must prove beyond a reasonable doubt the follow-

one: The existence of the conspiracy charged in the indictment.

Two: That the defendant knowingly and wilful; solved himself with the conspiracy, with the intent to further its purpose.

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Three: That one of the conspirators knowingly committed at least one of the overt acts set forth in the indictment at or about the time alleged, and that that overt act was done in the Southern District of New York.

I want you to know that the Southern District of New York is that part of New York State which runs from Governors Island to the Southern part of Albany County.

Certainly it does not include New Jersey or El Salvador, but I charge you as a matter of fact and of law that Mt.

Kisco, being located in Westchester County, is within the Southern District of New York.

If the government fails to establish each and every essential element beyond a reasonable doubt, then you must acquit the defendant on that count. If the government succeeds, your duty is to convict.

Let's consider what is a conspiracy. The idea of a conspiracy is simple. A conspiracy is a combination or agreement or understanding by two or more persons, by concerted action, to accomplish a criminal or unlawful purpose. In this instance, to unlawfully sell guns to buyers in the United States and to file false documents with the United States State Department.

The gist of the crime is the unlawful combinatio or agreement to violate the law. The indictment charges the

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defendants with conspiring to violate two separate federal statutes.

In order to convict the defendants, however,
it is no necessary that you find in fact that they
conspired to violate both statutes. It is sufficient that
you find a defendant conspired to commit acts which if done
would have violated either one of those statutes. The
success or failure of the conspiracy is totally immaterial
to the question of guilt or innocence of a conspirator.

In this case the government contends that a part of the conspiracy was to file false documents with the State Department, and that that succeeded. However, as I said, the success or failure of the conspiracy is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership in crime or a partnership with criminal purpose. As
to the partnership, each member becomes the agent of another.
To establish a conspiracy, the government is not required
to show that two or more persons sat around a table and
contered into a solemn pack...orally or in writing, stating
that they were forming a conspiracy to violate the law or
the details or the means by which the objectives were to
be attained.

Common sense will tell you that when persons in

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fact undertake to enter a criminal conspiracy, much is left to unexpressed understanding. But the evidence must show in order to establish that a conspiracy did exist that its members in some way, in some manner, through any contrivance, impliedly or tacitly, came to a common understanding to violate the law, to accomplish the unlawful plan.

In determining whether there has been an unlawful agreement, you may just acts and conduct of the alleged co-conspirators which were done to carry out any apparent criminal purpose. The adage "Actions speak louder than words" is truly applicable here.

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Usually the only evidence available is that of disconnected acts, conduct, conduct on the part of the alleged individual conspirators. You are to consider them as a whole, and in considering them as a whole, if they permit an inference that a conspiracy existed, and if you believe that beyond a reasonable doubt, then the government has met its burden on that element.

Items of evidence are not to be viewed in isolation but in conjunction with one another and upon the totality of all the evidence.

To become a member of the conspiracy, a defendant need not know each and every other member, nor the participat.

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of the other members nor the details of the conspiracy.

For example, there is no proof that certain defendants knew or even met certain other defendants or the alleged co-conspirators. Each member of the conspiracy may perform separate and distinct acts at different times, at different places. Some co-conspirators may play major roles and other minor roles.

The guilt of the conspirator is not governed by the extent, duration, whether he played a greater or lesser role in the conspiracy. Even if one joined a conspiracy after it was formed and engaged in it to a degree more limited than that of most of the other co-conspirators, he is equally culpable, as long as he was a conspirator.

In other words, it is not necessary for a person to be a member of a conspiracy at the start. He can join it at any point during its progress and be held responsible for all that has been done before he joined and all that hay be done thereafter, during its existence, and while he remains a member.

continue until its objectives are accomplished or there is an affirmative act of termination by its members, or it is otherwise terminated.

So too a person found to be a member of a

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conspiracy is presumed to continue in its membership until its termination or unless there is proof of his withdrawal or disassociation.

As I said, you must first determine whether the proof established the existence of the conspiracy as charged in the indictment.

In deciding this, you consider all of the evidence which has been admitted and such inferences as may reasonably be drawn therefrom.

Turning now more specifically to the second element which the government must prove beyond a reasonable doubt, if you conclude that a conspiracy did exist, then the next thing you have to do is determine whether either or each defendant was a member.

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Guilt, as I said, is personal, and you must consider each defendant individually. His participation in the conspiracy, if you find one did exist, must be established by independent evidence of his own acts, statements, conduct, and the reasonable inferences to be drawn therefrom.

of the conspiracy, you must be satisfied beyond a reasonable doubt that, aware of its purpose, a particular defendant was a willing participant with intent to advance the purpose of the conspiracy.

If you find that, no matter how limited the participation might be, he is responsible for everything that takes place in the conspiracy. Once you are satisfied beyond a reasonable doubt that a conspiracy existed and that a particular defendant is a member, as I told you, the acts and declarations of the other conspirators made during the existence or furtherance of the objects of the conspiracy are considered the acts and declarations of all the members of the conspiracy, even though they were not present.

I mentioned to you that certain evidence was taken subject to connection. I told you at the time I would explain it in detail to you.

that a conspiracy existed and that a particular defendant was a member, then the acts and declarations of any other person whom you also find was a member of the conspiracy made during the existence of the conspiracy and in furtherance of its objects are the acts and declarations of all the members of the conspiracy...even though they were not present.

If there was a partnership, either partner
acts and speaks for the others in furtherance of the partnership business, even though the other partners are not present.

It is most important that you recognize that this principle that we are talking about now applies to the acts and declarations done or made during the continuance of the conspiracy charged and in furtherance thereof.

The conspiracy in this case ended at the time of the arrest of the defendants, and anything that happened thereafter cannot be considered as something that happened during the existence of the conspiracy.

In furtherance thereof, I have used those words.

It means to carry out the object of the conspiracy. It

does not apply to anything else which does not have those
characteristics.

therein may be established by either direct or circumstantial evidence. Either direct or circumstantial evidence will suffice if you are convinced by that evidence beyond a reasonable doubt of the guilt of the particular defendant you are concerned with at that time. In this case the government relies on both direct and circumstantial evidence.

and of James Gray and has in addition to the circumstantial evidence offered direct proof of the conspiracy.

If the reasonable inferences to be drawn from all the evidence lead you to two conclusions, however,

one favoring guilt and one favoring innocence, then you are to accept and favor that one which favors innocence.

The reason for this is that if both conclusions are reasonable, then you have a reasonable doubt. Needless to say whether a defendant knowingly and intentionally participated in a claimed conspiracy is a question of fact, including this claim of going into and determining what is in a person's mind. Science has yet to invent a device whereby we can go back in time and attach a device to a person's head and find out what he is thinking.

You are going to have to determine whether a defendant knowingly and intentionally participated from that person's act, conduct and surrounding circumstance and such inference that you may draw from those. Knowledge may be inferred from circumstances that would convince men of ordinary intelligence that this is a fact.

If you find, of course, that a defendant acted with intensional disregard or the conscious purpose of avoiding learning the truth, then the requirement of knowledge is similarly met.

If you find circumstances of secrecy, intrique, aftempts to conceal the true nature of a transaction, you may but need not consider that as circumstantial evidence of criminal intent.

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The evidence, however, offered and to be considered by you on the question of knowledge should not in and of itself serve as a substitute for other proof.

It is to be considered by you with all the other evidence in the case and use your judgment. Let me give you a word of caution on this.

Mere association with an alleged co-conspirator does not establish the participation of anyone in the conspiracy, if you find one to exist, nor does association, even coupled with knowledge, make for you a conclusion that that person joined in the conspiracy. Mere presence during a conspiratorial act, coupled with knowledge but without participation, is not enough.

A conspirator must knowingly and intentionally join the conspiracy, and when I say join the conspiracy, I don't mean that he has got to receive a membership card, but I do mean that he must knowingly join in the venture. He must promote it, he has to have a stake in the outcome. In the vernacular, he has got to be in on the scheme.

Thus, even if you find a particular defendant associated with other alleged conspirators, but if you find that the latter were participants in an unlawful conspiracy, that this particular accused knew the others were engaged in such activities, that would not be sufficient to

llijw 883 find that particular defendant guilty on the conspiracy charge. As I explained, statements and acts of a conspirator, of the alleged conspirator, each alleged conspirator, must be considered by you to determine whether he knowingly, wilfully and intentionally joined in the conspiracy, if you find one to exist. If you find that he did, then statements or acts of other proven co-conspirators can be considered only if in furtherance of and during the existence of the conspiracy. Proof of a subsequent statement is not and cannot be the substitute for proof of the crime charged in this indictment. Let me say once again, before you can find a defendant quilty, you must find that the defendant participate in the conspiracy, the conspiracy charged in this indictment, with knowledge of at least some of its purposes and with the intent to aid the accomplishment of its unlawful end. Now we have a third element, and that is the severnment must prove that an overt act intended to effect an object of the conspiracy was committed by at least one of the co-conspirators after the unlawful agreement was An overt act is any action or conduct which is -44A-IN NOTE OF BUILDING STREET, THE COURTHOUSA

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taken to achieve, accomplish or further the object of the conspiracy. The purpose of requiring proof of an overt act is that while parties may conspire and agree to violate the law, they could change their minds and do nothing to carry the agreement into effect. In that event the agreement does not constitute an offense.

An overt act need not be a criminal act nor need it be the very crime which is charged as the object of the conspiracy. In this particular indictment a number of overt acts have been alleged. You will receive a copy of the indictment and of course you can refer to it. You will see that a particular overt act may by itself charge innocent conduct. But if it was for the purpose of furthering the conspiracy, in that event it sheds its innocent appearance.

It is an overt act by the alleged co-conspirator in furtherance of the object of the conspiracy. It is not necessary for the government to prove that each member of the conspiracy participated in each and every overt wit, since the act of anyone in furtherance of the conspiracy becomes an act of all the other members.

Rapidly I am going to run through the overt

In furtherance of said conspiracy and in order

lhow 885 to accomplish its objectives, the defendants committed the following overt acts, among others in the Southern District of New York and elsewhere: 1. On or about March 20, 1976 the defendant Robert Michaelson traveled to the Pepper Tree Restaurant, Mt. Kisco, New York in order to meet and negotiate with prospective buyers of weapons, munitions and other implements of war. 2. On or about March 21, 1976 the defendant Raymond Geraldo traveled to the Pepper Tree Restaurant, Mt. Kisco, New York and had a conversation concerning the sale of certain weapons, munitions and other implements of war. 3. On or about March 22, 1976 the defendants Domainick Caglanese and Raymond Geraldo met at the Pepper Tree Restaurant, Mt. Kisco, New York and had a conversation concerning arrangements to obtain from an official of a foreign government false and fraudulent documents to be filed with the United States Department of State. 4. On or about March 27, 1976, March 20, 1976 and April 14, 1976, at the Pepper Tree Restaurant, Mt. Kisco, New York, the defendants Dominick Cagianese, Frank G. A varez, Raymond Geraldo and Robert Michaelson had conversations concerning an initial sale of 10,000 submachine -46A-SHITTERN OF TRICE COURT REPORTERS IT'S COURTHOUSE

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guns for a price of \$2,800,000.

- 5. On or about April 1, 1976, the defendant
 Dominick Cagianese traveled to the vicinity of WinstonSalem, North Carolina in order to observe and participate
 in a test-firing, demonstration of a Bushmaster submachine
 gun.
- 6. In or about April 1976, the defendant Raymond Geraldo traveled to Central America for the purpose of obtaining a false and fraudulent certificate from an official of a Central American country.
- 7. On or about May 2, 1976 the defendants Raymond Geraldo, Robert Michaelson, Dominick Cagianese and Miguel D. Celis, met at the Pepper Tree Restaurant, Mt. Kisco, New York and had a conversation concerning a cash payment to be made to the defendant Manuel Alfonso Rodriguez in return for the defendant Rodriguez facilitating the filing of false and fraudulent documents with the United States Department of State.
- 9. On or about May 3, 1976 the defendants Frank

 G. Alvarez, Miquel D. Celis, and Raymond Geraldo met at the offices of Mott Haven Industries, Ltd., 429 Bruckner

 Boulevard, Bronx, New York and had a conversation concerning the preparation of false and fraudulent documents to be filed with the United States Department of State.

- 9. On or about May 4, 1976 the defendants Frank G.
 Alvarez, Miguel D. Celis and Raymond Geraldo met at the
 offices of Mott Haven Industries, Ltd., 429 Bruckner
 Boulevard, Bronx, New York, and had a further conversation
 concerning arrangements to file certain false and fraudulent
 documents with the United States Department of State.
- 10. On or about May 5, 1976 the defendant Frank G. Alvarez directed one of his employees to deliver certain false and fraudulent documents to the United States
 Department of State, Washington, D.C.
- 11. On or about May 14, 1976 the defendant Frank
 G. Alvarez placed a telephone call from the offices of Mott
 Haven Industries, Ltd., to El Salvador, Central America.
- 12. On or about May 14, 1976 the defendant Frank

 O. Alvarez placed a telephone call from the offices of Mott

 Hiven Industries, Ltd., to the United States Department

 of State, Washington, D.C.
- Alfonso Rodriguez, Miguel D. Celis, Raymond Geraldo, Irwin Tobocman, Robert Michaelson and Frank G. Alvarez met at the Holiday Inn, Mt. Kisco, New York and discussed their plan to sell weapons, munitions and other implements of war to bayers in the United States.
- 14. On or about May 15, 1976 at the Holiday Inn,

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Mt. Kisco, New York, the defendants Manuel Alfonso Rodriguez and Miguel D. Celis received the approximate sum of \$75,000 in cash for having provided, and having agreed to provide certain false and fraudulent documents filed and to be filed with the United States Department of State.

15. On or about May 15, 1976 at the Holiday Inn, Mt. Kisco, New York, the defendants Robert Michaelson and Irwin Tobocman received the approximate sum of \$25,000 in cash for having facilitated the preparation of false and fraudulent documents filed and to be filed with the United States Department of State.

That is all of the overt acts alleged in the indictment. The government is not required to prove each and every one of the overt acts. It is sufficient if it proves the commission of at least one of the acts in the Southern District of New York, as I explained to you before, that includes Mt. Kisco, at or about the time alleged, of course, although in this case the government claims it proved more overt acts than the one required.

or about the time alleged. It does not necessarily have to occur at the precise time or place as alleged. So too, the indictment charges that the conspiracy began on or about January 1, 1976 and continued thereafter until May 15, 1976.

It is not required that the government prove that the conspiracy started on a specific date or ended on that specific date.

I told you that anything that occurred after the ending date is to be considered by you only as to the defendant against whom it was offered.

It is sufficient if you find in fact that the conspiracy was formed and existed for some substantial

It is sufficient if you find in fact that the conspiracy was formed and existed for some substantial period of time within the period set forth in the indictment, and that at least one of the overt acts was committed in furtherance of the conspiracy during that period.

These principles as a guide you will consider whether the government has by the required degree of proof established the essential elements as to each defendant.

Now let me turn to the remaining counts, Counts 2. 3 and 4.

With regard to the substantive counts, it is important that you understand that both of the defendants are not named in all three of these counts. The defendant agrando is charged in Counts 2, 3 and 4. The defendant Rodriquez is charged in Count 3 but not Counts 2 and 4. It may sound complicated, but it is not. Let me go through it again.

The defendant Geraldo is named in Counts 1, 2,

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3 and 4. The defendant Rodriguez is named in Counts 1 and 3. With that understanding in mind, let me tell you a little bit about the law which is the basis for these substantive counts.

The statute which the defendants are charged with violating in Counts 2, 3 and 4, and when I say "defendants," remember I am trying to just shortcut it, the defendant Geraldo is named in all, 2, 3 and 4, and the defendant Rodriguez is to be considered only in Count 3, the section charged is that os 1001 of Title 18.

That section provides in pertinent part that whoever, in any manner, within the jurisdiction of any department or ageny of the United States, knowingly and wilfully makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document, knowing the same to contain a false, fictitious or fraudulent statement, and then it goes on, and what it moans is, commits a crime.

Let's take a look at just Count 3 of the indictment. Perhaps I should read each, 2, 3 and 4.

Count 2: The grand jury further charges:

On or about May 5, 1976, in the Southern District of New York and elsewhere, Dominick Cagianese, Frank G.

Alvarez, Irwin Tobocman, Robert Michaelson, Raymond Geraldo,

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and Miguel D. Celis, the defendants, in a matter within the jurisdiction of a department or agent of the United States, to wit, the United States Department of State, unlawfully, wilfully and knowingly did make, facilitate the making of, and cause to be made certain false, fictitious and fraudulent statements and representations on a United States Department of State Form DSP-5, entitled Application/License for Permanent Export of Unclassified Implements of War that 10,000 Bushmaster submachine guns having an approximate value of \$2,550,000 together with 1.5 million rounds of ammunition for the said submachine guns were to be exported to the nation of El Salvador, Central America for use in al Salvador's national defense, whereas, in truth and in fact, the defendants then and there well knew that the said 10,000 Bushmaster submachine guns were to be sold to individuals in the United States at a price of approximately 12,800,000 and further that the 1.5 million rounds of ammunition were to be sold to the same individuals in the United States.

Count 3 charges that:

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On or about May 5, 1976, in the Southern Distriction of New York and elsewhere, Dominick Cagianese, Frank G.

Alvarez, Irwin Tobocman, Robert Michaelson, Raymond Geraldo,

Miguel D. Celis, and Manuel Alfonso Rodriguez, the defendants, in a matter within the jurisdiction of a department or agents of the United States, to wit, the United States Department of State, unlawfully, wilfully and knowingly did make, facilitate the making of, and cause to be made certain false, fictitious and fraudulent statements and representations on a certificate dated April 22, 1976 on the official letterhead of the Estado Mayor General De La Fuerza Armada, San Salvador, El Salvador, C.A., bearing the signature of the defendant Manuel Alfonso Rodriguez, that 10,000 Bushmaster submachine guns and 1.5 million rounds of ammunition for said submachine guns were to be used by the armed forces of El Salvador and would not be re-exported to any third party whereas, in truth and in fact, the defendants then and there well knew that the said 10,000 Bushmaster submachine guns and the 1.5 million rounds of ammunition were to be sold to individuals in the United States.

Count 4. The grand jury further charges that:

On or about May 5, 1976 in the Southern District
of New York and elsewhere, Dominick Cagianese, Frank G.

Alvarez, Irwin Tobocman, Robert Michaelson, Raymond Geraldo,
and Miguel D. Celis, the defendants, in a matter within the
jurisdiction of a department or agency of the United States,

wilfully and knowingly did make, facilitate the making of, and cause to be made certain false, fictitious and fraudulent statements and representations on a purchase order, dated May 3, 1976, from San Pan Trading Corporation, 3 Wren Drive, Woodbury, New York to Mott Haven Industries, Ltd., 429 Bruckner Boulevard, Bronx, New York, that 10,000 machine guns at a price of \$245 each together with 1.5 million rounds of ammunition were to be exported to El Salvador, Central America, whereas, in truth and in fact, the defendants then and there well knew that the 10,000 machine guns were to be sold to individuals in the United States for approximately \$2,800,000 and further that the 1.5 million rounds of ammunition were to be sold to the same individuals in the United States.

In order to find the defendant Geraldo guilty on Counts 2, 3 and 4 or the defendant Rodriguez guilty on Count 3, you must be satisfied beyond a reasonable doubt of four things.

First, that on or about the dates charged,
the defendants or the defendant that you are considering at
the time made or facilitated the making of and caused to
be made certain statements or representations.

Two, that the representations or statements

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were false, fictitious or fraudulent.

Three, that the defendant you are considering knew that the statements or representations were false, fictitious or fraudulent.

Four, that the statements or representations were made within the jurisdiction of a department or agency of the United States.

I charge you as a matter of law that the United States Department of State is a department, as that word is used in this case, a department of the United States.

The first element that the government must prove is that the defendants that you are considering made, facilitated or caused to be made certain statements.

With respect to Count 2, the statement which the government contends was made is Exhibit 30, a Form DSP-5, Application for License for the Export of 10,000 submachine guns.

With respect to Count 3, the statement that the government contends was false was Government's Exhibit 32, end use certificate, typed in Spanish, and bearing a signature which purported to be that of Manuel Alfonso Rodriguez.

With respect to Count 4, the statement which the government contends was made is Government's Exhibit 32,

purchase order from San Pan Trading Corporation to Mott Haven Truck Parts, Inc.

As I said before, the counts of the indictment charge that the acts involved occurred on or about a certain date. It does not matter if the specific transaction is alleged to have occurred on that date and the evidence and you find that it occurred on some other date. The law requires only substantial similarity between the dates alleged in the indictment and those that you find are established by the evidence.

Secondly, the government must show that the statements that were made facilitated or caused to be made, were false, fictitious or fraudulent.

The government contends that the three statements reflected in these counts were false because they
represent that the 10,000 Bushmaster submachine guns and
1.5 million rounds of ammunition were to be sold to and used
by the Armed Forces of El Salvador, when, it is alleged, the
submachine guns and ammunition were going to be sold to and
used by purchasers in the United States.

The third element, the government must show that the defendant knew that the statements were false. This involves a question of knowledge and intent. Whether there is knowledge and intent is a question that you must

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find from all the facts and surrounding circumstances.

If you find that a defendant acted by mistake, inadvertance or for some other reason, then he cannot be found guilty to have knowingly committed the offense charged.

On the other hand, if you find that the statements and representations were made by a defendant when he knew these statements and representations were false, then this third element is proved.

With respect to the defendants' knowledge and intent, you will recall that the defendants are charged with having acted knowingly, wilfully and unlawfully.

I direct your attention to the words knowingly and wilfully. What do those words mean? Is there something mysterious or complicated about the words knowingly and wilfully?

They do not mean that the government has to show that the defendant knew that he was breaking a particular law to be convicted of a crime. They do not mean that the government has to show that the defendant intended to profit at the expense of the government.

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The words knowingly and wilfully mean deliberate; intentionally. In other words, knowingly and wilfully mean

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that a defendant made the false statement or false statements with knowledge that the statement or statements were false and that he intended to make them deliberately and in the free exercise of his will.

If there was an innocent misstatement made by the defendant, if he had made an erroneous or incorrect statement, but innocently, he would not be guilty of the crime of making a false statement or representation. If he made an erroneous or incorrect statement due to the slip of the tongue or bad memory or through misunderstanding, he would not be guilty of making a false statement within the statute.

But if the defendant was aware of the fact that he was making a false statement and he knew and believed that the statement was false or fictitious, then he was acting knowingly and wilfully.

Knowledge and intent, of course, exist in the mind. It is not possible to look into somebody's mind to see what he thought, what he knew. The only way you have for arriving at a decision on those questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and determine from all of this whether the requisites of knowledge and intent were present at the time in question.

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The fourth element, with respect to each count, it is that the statement be made within the jurisduction of a department or agency of the United States.

As I already told you, the United States Department of State is a department of the United States, within the meaning of this statute.

If you find that a defendant submitted documents to the United States Department of State on a matter pending before it, then the fourth element is satisfied.

The crimes charged in Counts 2, 3 and 4 are completed on the filing of the alleged false statement.

Section 1001 has nothing to do with whether or not the government agency that received the documents were fooled or were defrauded by them. It is enough that the government prove that the false statements or false documents were filed with the government agency, not that the agency ever acted upon them, nor is it necessary that you find that the State Department would have approved the application. Even if the State Department had turned down the application, the filing of a false statement, if you find it that such happened, then you can also find that the statute was violated.

There is one other statute that I must mention to you.

In connection with the crimes charged in Counts 2, 3 and 4, the government contends that the defendant Geraldo in all three counts and the defendant Rodriguez in Count 2 may be held responsible for the filing of the documents under the so-called aiding and abetting statute.

Let me read that to you. It is fairly simple. Whoever commits an offense against the United States or aid, abets, counsels, commands, induces or procures the commission is punishable as a principal. Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal.

It is not necessary for the government to show that any defendant personally committed the crime charged under this law.

A person who aids and abets another to commit the offense is just as guilty of the offense as if he himself committed every act in relation to it.

You may find, therefore, a defendant guilty of a substantive offense if you find beyond a reasonable doubt that one defendant committed an offense and that another defendant aided and abetted him.

In order to find that a defendant aided and abetted, you must be satisfied that the particular defendant -60A-

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in some way knowingly associated himself with the criminal venture and knowingly participated in it as something he wished to bring about and by some action of his tried to make it succeed, that he had, as I said before, a stake in the venture.

In other words, if one fully aware of what he is doing plays a significant role in the furtherance of a transaction prohibited by law, he is an aider and abettor, and as such is equally guilty with the person who directly performed the illegal acts which constitute the crime.

There are a few other general matters, and very few, which I want to take up with you before you begin your deliberations.

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As I said, you may have heard an inference at some time as to possible sentence. I told you, you are the sole judges of the facts. Sentences are none of your business. That's my duty, and it is a very heavy one. Don't burden yourself with being more than judges of the fact.

Matters of law I am required to handle. The law which you need to know is what I have been trying to give you in this charge to you.

All of the evidence, both direct and cross examination, and the exhibits should be considered by you.

Let me remind you again, to prevail the

government must prove with respect to each count the essential elements as I have outlined them beyond a reasonable doubt.

I have explained to you that if it does so, your verdict must be guilty. If it fails, your verdict must be not guilty.

You must consider each count separately and render a separate verdict as to each count. You must consider each defendant separately and render a separate verdict as to each defendant.

You may render a verdict of guilty on each count or a verdict of not guilty on each count or guilty on one count and not guilty on others, and so on and so forth.

That is entirely within your province.

There will be twelve of you on the jury that
will deliberate. If you are to find a defendant guilty,
your verdict must be unanimous. No one should enter into
deliberations in a jury room with such a pride that you
would refuse to change your opinion if convinced by the
intelligent arguments on the part of another juror or jurors.
However, don't do violence to your own opinion. You are
entitled to that opinion.

himself or herself after reviewing the evidence and exchanging

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views with your fellow jurors.

If you wish any part of the exhibits, they will be sent in to you, except for the tape recording which for technical reasons will have to be played to you here.

If you wish any of the testimony read back to you, it will be.

This is an important case. Every criminal case is important. It is important to the government. You know how important it is to the defendants. Please handle it in an important manner. Decide the case solely on the evidence or the lack of evidence and the law as I have charged it to you.

Gentlemen, d' you wish to see me?

MR. LANG: No, your Honor.

MR. HALLINAN: No, I have no exceptions. I would like to request again in haec verba my requests to charge.

THE COURT: It was done my way.

Mr. Fiske?

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. MR. FISKE: .. Wa.are satisfied with the charge, your Honor.

(At this point, one marshal was duly sworn)

THE COURT: I told you that there will be
twelve of you deliberating. Mr. Enrique Negron, Miss

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Esther L. Mosca and Miss Joan M. Treble, you may be excused at this point.

Madam Marshal, would you be good enough to escort the jury to the jury room.

(Jury commenced deliberations at 11:35 a.m.)

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2		UNITED STATES DISTRICT COURT
-3		SOUTHERN DISTRICT OF NEW YORK
4		X
5		UNITED STATES OF AMERICA, :
b		- v s - :
7		MIGUEL D. CELIS, : 76 Cr. 503 (GLB) KTD
8		Defendant. :
9		X
10		
1		Before:
12		HON. CHARLES L. BRICANT,
13		District Judge.
14		
15		New York, N. Y. May 26, 1976 - 4:00 p.m.
16		Appearances:
13		ROBERT B. FISHE, JR., ESO.,
18		United States Attorney for the Southern District of New York;
19		By: ROBERT GOLD, ESQ., JAMES MOSS, ESQ.
20		PETER LEISURE, ESQ., For the defendant.
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THE COURT: Has the defendant been before the Ragistrate?

MR. GOLD: Ho has, your Bonor.

THE COURT: What is the application?

MR. COLD: At this time, the defendant, Miguel

D. Celis, and his lawyer, Peter Leisure, wish to plead guilty to Count 3 of the indictment before your Monor.

THE COURT: What is your name?

THE DEFENDANT: Miguel Daniel Celis.

THE COURT: Do you require an interpreter?

THE DEFENDANT: No, I don't. I speak English.

BY THE COURT:

- Q How old are you?
- A 39.
 - Q How far did you go in school?
 - A I have a college education.
 - Q Whereabouts?
- A I went to the Pierce School of Business Administration, and I was trained by the United States Department of Commerce in Washington, D. C.
 - Q What is your occupation?
 - A I am a businessman, your Honor.
 - Q Are you married?
 - A Yes, sir.

Honor.

	Q	Are you currently, or have you recently been,	
3	under the	care of a physician or a psychiatrist?	
4	. A	No, sir.	
5	Q	Have you been hospitalized or treated recently	
6	for alcoho	lism or for narcotics?	
7	A	No, your Honor.	
8	Q	Are you feeling all right physically today?	
9	A	Yes, sir.	
10	Q	Have you gone over Count 3 with your attorney,	
11	Mr. Leisur	e?	
12	A	Yes.	
13	Q	Has he explained to you what the charge is	
14	against you in Count 3?		
15	A	Yes, sir.	
15	Q	Do you fully understand it?	
17	A	I do, your Honor.	
18	Q	Are you satisfied with the representation of	
19	you?		
20	A	I am.	
21	Q	You are?	
22	A	Yes.	
23	Q	Is he privately retained or assigned?	
24		MR. LETSURE: I am privately retained, your	

. 1.1

And the state of t

MR. LETSURE: Your Honor, it may be a technicality that I am raising, but it is our understanding that he would be pleading to aiding and abetting in connection with Count 3.

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of not guilty as to all the other counts?

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MR. GOLD: Our understanding is that the other counts will be carried open until sentence is imposed,

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at which time the Government will move to dismiss them.

BY THE COURT:

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Q Do you understand the nature of the charge against you in Count 3? You are charged, along with certain other persons therein named, in a matter within the jurisdiction of the United States Dapartment of State, unlawfully, wilfully, and knowingly facilitating the mailing of, and caused to be mailed, false, fictitious, and fraudulent statements on the certificate dated April 22nd, 1976 relating to certain submachine guns to the effect they were to be used by the Armed Forces of El Savador when, in truth, and in fact, you then and there knew they were to be sold to individuals in the United States?

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Do you understand the charge against you?

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A Yes, sir.

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O Do you understand that the maximum possible

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penalty provided by law is that you may be sentenced to a term of imprisonment of not more than five years? You may be fined the sum of \$10,000 or both.

Do you understand that?

- A I understand that.
- Q Do you understand you have a right to be represented by your lawyer at every stage of the proceedings, and, if necessary, if you have no funds, an attorney would be appointed to represent you? Do you understand that?
 - A I understand that.
- Q Do you understand that you have a right to plead not guilty and you have the right to have a speedy and public trial by a jury of twelve people, and on that trial you will have the right of assistance of counsel and the right to confront or cross-examine witnesses against you, and at such trial you cannot be compelled to incriminate yourself or to testify unless you wish to do so? Do you understand that?
 - A Yes, your Honor.
- Q Do you understand, further, that if your plea of guilty is accepted today there will not be any trial of any kind, so that by pleading guilty you waive your right to a trial? By that I mean you give up your right to a trial. Do you understand that?

21'

A Yes

Q Do you understand that if you plead guilty the Court may ask you questions as to what you have done?

A Yes, sir.

Q Have you been induced to offer to plead guilty by reason of any promises, statements, or predictions by anybody to the effect you would get leniency or special treatment or special consideration if you pleaded guilty instead of going to trial?

MR. LEISURE: Your Honor, if I may say this:
In talking with the Assistant United States Attorney, as
he has already stated, he indicated the Government would
carry the three open counts which the defendant Celis has
not pleaded to until the date of sentencing, at which time
the Government will move to dismiss those open counts.

Also, at that time, the Assistant United States Attorney
has told me he would make aware to the Court the extent
of cooperation that the Defendant Celis has given to the
Government; furthermore, if the defendant has any problems
in relocation or in employment following the sentencing,
the Government has indicated it will use its best efforts
to solve those problems. That is the full extent to which
the Assistant United States Attorney and I have conferred.

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Do you understand what counsel has just said?

Yes, sir.

Is there anything he has omitted? Is there anything you want to tell the Court about?

No, sir. A

Are you being induced to offer to plead guilty or are you pleading guilty because you are guilty and they can most likely prove it?

I am guilty of the charges.

Have you been subjected to any fear or pressure or force, or anything like that, in order to induce you to plead quilty?

No, your Honor.

Are you presently under the influence of anything, such as alcohol or drugs, or anything that might affect your ability to understand what you are doing now?

A No, your Honor.

THE COURT: Does the Government represent it has sufficient evidence to make a prima facie case as to Count 3?

MR. GOLD: Yes, your Honor.

THE COURT: Mr. Leisure, do you know of any valid legal defense available to your client on Count 3,

> SOUTHERN DISTRICT OF REPORTERS US COURTHOUSE EGILY SQUART NEW YORK INY - 791-1070 -72- SA

a Grand Jury exhibit marked as Exhibit No. 5, which is referred to in Count 3. It is a single-page document, and that is what he is referring to, your Honor.

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Q What did you do with respect to that document? A I brought it to the United States, your Honor, and I helped to trace the signature, and I helped in filling it out.

-73- SA

1	. 10	
2	THE COURT: Hand that to the Clerk.	
3	[Pause.]	
4	Q Did you do that in order to assist somebody in	
5	· obtaining certain firearms?	
6	A Yes, sir.	
7	Q Did you do that intentionally and knowingly?	
8	A. Yes, your Honor.	
9	Q You knew it was wrong?	
10	A I knew that the weapons would never go to	
11	El Salvador, your Honor.	
12	Q You knew the use of the certificate was frau-	
13	dulent?	
14	A Yes, your Honor.	
15	THE COURT: Is there any further inquiry	
16	which counsel believes the Court should make before	
17	entering the plea?	
18	MR. GOLD: No, your Honor.	
19	THE COURT: I will accept your plea.	
20	I direct that a full pre-sentence report be	
21	made.	
22	Has he been fingerprinted and photographed?	
23	MR. GOLD: He has.	
34	THE COURT: I think, for the record, I ought	

I don't

to enter a not quilty plea on the other counts.

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insist on doing that.

MR. GOLD: I think that will be better, your Monor.

THE COURT: You can be sentenced by me, if you want, or you can await the arraignment of the other defendants, in which case the entire matter will go to a Judge of this court to be selected by random selection through these wheels we have over here [indicating]. You can do whatever you like on that.

The basic premise of the American Bar Association minimum standards is that, where possible, the Judge who has presided at the acceptance of the plea ought to impose sentence; however, that's not mandatory. That's found in Section 5.1 of Part 5 of the Standards relating to Administration of Criminal Justice, published by the American Bar Association in 1974. It is not binding on this Court. However, that has been cited favorably by the Court of Appeals and other Courts.

Mr. Leisure, you can agree with the Assistant United States Attorney.

MR. LEISURE: May I confer with them briefly?

THE COURT: Indeed.

[Pause.]

THE COURT: Is he on bail now?

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MR. GOLD: He is being held in lieu of \$1,000,000 cash.

MR. LEISURE: It is anticipated that the Defendant Celis will testify at the trial, and under those circumstances I think it would be preferable that the Judge who hears the case andhears his testimony be the sentencing Judge.

THE COURT: That is acceptable.

Tomorrow, when I assign the case, I will so indicate that the sentence will be imposed by the assigned Judge. Under those circumstances I will have to leave the date flexible.

If there is no objection the sentencing will be adjourned sine die.

MR. LEISURE: There is no objection to that, your Honor.

THE COURT: What about his bail?

MR. LEISURE: We are willing to continue it at this time. If there is an application in the future with regard to the bail I, of course, would make it.

THE COURT: You are continued. Your bail is continued in the amoung of \$1,000,000 cash or surety, and you are remanded to the United States Marshal in lieu of that bail.

	rgs:
2	Will the marshal bring him to the Probation
	Office either tomorrow or the next day?
	MR. GOLD: We will see that it is done, you
	Honor.
,	THE COURT: Take the slip from the Clerk.
	Take him to the Probation Department sometime tomorrow.
3	[Time noted: 4:15 p.m.]
.	

is a true and accurate transming the best of my (our) skill and ability from my (our) stonographic notes of this proceeding.

Office of our Reporter



INTADO MAYOR GENERAL PUERZA ARMADA

AN SALVADOR, EL SALVADOR,
C. A.

FECHA:

ASUNTO:

OFICIO NO

CIPENDENCIA

CLASIFIC

GOVERNMENT'S
TO CLE SES INTO
EXHIBIT
U. S. DIST. COURT

S. D. OF N. Y.



Trosa. 22 De Abril De 1976

ASUNTO:

Gricio No

DEPLLOENCIA

CLASIFIC

San Pan Trading Corporation 3 Wren Drive Woodbury, New York 11797

SENORES:

POR LA PRESENTE CERTIFICAMOS QUE LAS DIEZ MIL AMETRALLADORAS "BUSH MASTER" QUE HEMOS ORDENADO DE USTEDES SON PARA EL USO DE LAS FUERZAS ARMADAS DE NUESTRO PAIS Y NO SERAN RE-EXPORTADAS NI CEDIDAS EN PARTE O TOTALMENTE A UN TERCERO,

DIGS, ONION, LIBERTAL

Manuel Alfonso Rodriguez Coronel De Artilleria D.E.M. Jete Del E.M.G.F.A.

GOVERNMENTS

EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

79 SA

ESTADO I. VOE CLASSOLE DELEA POLIS ARBIAS SAN SALVAL ... LE EST SINGE, Tima: 22 the Abril De 1976 ALUNIO: 4 100 Origio No. 76 (8503 KTD DEPENDENCIA USA 334 - 475 (ED 4-23-71) GOVERNMENTS U. S. DIST. COURT S. D. OF N. Y. SEP 24 19/6 San Pan Trading Corporation 3 Wren Drive Woodbury, New York 11797 SINORES: POR LA PRESENTE CENTIFICAMED QUE LAS DIEZ MIL AMETRALLADORAS "BUSH MASTER" QUE HEMOS ORDENADO DE USTEDES SON PARA EL USO DE LAS FUERZAS ARUADAS DE NUESTRO PAIS Y NO SERAN . RE-EXPORTADAS NI CEDIDAS EL PARTE O JUTALMENTE A UN ESTE CERTIFICADO TAMBIEN CUERTE UN MILLON OUTSTENVOS MIL CAR-TUCHOS CALIBRE 5.56mus.

DIOL, UNION, LIBERTAD

Mar of Alfrado Rodriguez Conder de Armilleria D.E.M. Jeta Del E.M.C.F.A.

80 SA

Received 1/1/16/2



ICSTADO MAYOR GENERAL DE LA PUREZA ARMADA TAN BALVADON, EL BALVADOR, C. A.

OFICEO NO. 4 OUG

FECHA: 22 De Abril De 1976

ASUNTO:

San Pan Trading Corporation 3 Wren Drive Woodbury, New York 11797

SENORES:

- 44

POR LA PRESENTE CERTIFICAMOS QUE LAS DIEZ MIL AMETRALLADORAS
"BUSH MASTER" QUE HEMOS ORDENADO DE USTEDES SON PARA EL
USO DE LAS FUERZAS ARMADAS DE NUESTRO PAIS Y NO SERAN
RE-EXPORTADAS NI CEDIDAS EN PARTE O TOTALMENTE A UN
TERCERO.

ESTE CERTIFICADO TAMBIEN CUBRE UN MILLON OUINIENTOS MIL CAR-

DIOS, UNION, LIBERTAD

USA 33-479 SEP 3 0 1976

GOYERNMENT'S

EXHIBIT
U. S. DIST. COURT
S. D. OF H. Y.

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Andr.

Manuel Alfonso Rodriguez

Manuel Alfonso Rodriguez Coronel De Artilleria D.E.M. Jefe Del E.M.G.F.A.

81 SA



Transcriptions of Nagra Tape Recordings made by Government Agent Joseph Kelly furnished by the Government as 3500 material heard by Jury and used by Jury

MAY 2, 1976

Page 5

MICHAELSON: (654) These guys, this man, okay, is an independent son-of-a-bitch, I did not know he was dealing with him in San Salvador, I thought he was involved in Guatemala. Right now I'm going to give you a little of the background. I'm doing more business in San Salvador, than any other company in the world. I'm buying coffee out of there, I'm buying cotton, I'm buying all the bullshit, food, this and that, Salvador, because of Ray and so I got a good position. I know this man. I'm going to tell you something very bluntly. This man is an animal. Most vicious man I've ever met in my life. He would just as soon take a gun, put it to your face and pull the trigger, than say hello to you.

That is the type of human being that this is. So you know who we are dealing with.

CAGIANESE:

He is not human.

MICHAELSON:

Okay, he is not a human being ...

GERALDO:

. . .

No talk, no talk.

MICHAELSON: (058) He does things his way. And that is it. Okay, I don't know what went on, you know. I wasn't in the conversation, naturally, in San Salvador, but I know the human being.

Transcriptions of Nagra Tape Recordings made by Government Agent Joseph Kelly furnished by the Government as 3500 material heard by Jury and used by Jury

MAY 2, 1976

Page 6

MICHAELSON:

I know just the type this guy is, and he is a doer. I mean, if he says he'll do it, he will do it. And he has done things for me. Okay. Which are fantastic. I'm very happy. I met with these guys today. They got the documents, I've seen them. He hasn't seen them, I've seen them. Everything. There is only one signature in Washington. You bring the document to Washington. Washington checks to see the signature. There is only one man who can sign arms, in San Salvador, this man.

STAGG: (062)

Oh, is this . . . San Salvador

KLLLY:

And, and this signature is on the papers.

MICHAELSON:

It is the only signature. Any other signature (2nd voice maid), Washington would have to say, wait a minute, I've got to check this out . . .

MICHAELSON:

That's what they do anyhow.

MICHAELSON:

I was just talking to . . . ya know. This is the sign ture that is registered in Washington. Okay. This man may simply want the following: first of all, and I, I bullshit a little bit, I don't like to bullshit. I told these guys this morning, Ray had told it to the Colonel . .

MAY 2, 1976

Page 7

MICHAELSON:

Here are the documents, it's signed, here's what it is...you got the seal, the sign, everything is by the man, the colonel, and we type in what we want, you want to type in on the letter.

GERALDO:

Couldn't get a better deal than that.

GERALDO:

Nothing better than that. Could you, eh,

can't ruin O.K.

CAGIANESE:

You can't beat that.

Transcriptions of Magra Tape Recordings made by Government Agent Joseph Kelly furnished by the Government as 3500 material heard by Jury and used by Jury

MAY 2, 1976

Page 53

KELLY: While we're, while we're standing here,

we're relaxed, these guys come, these Latins

come up, let's be cool with them.

MICHAELSON: Yeah.

KELLY: No emotion, I don't want to burn these

guys up by getting them pissed off and

walking out.

CAGIANESE: Wait a second, the one guy is the heavyweight.

KELLY: Is he gonna be here today?

CAGIANESE: Yeah, he's gonna be here now, now the guy

what's his name?

I don't know who he is.

KELLY: Who's the heavyweight?

MICHAELSON: (PH) Cr, Cul, Cuhlico, Culleio.

KELLY: Is he the guy who signed it?

He's not, 'cause Rodriguez signed.

MAY 2, 1976

Page 54

I mean this thing is already signed. STAGG:

It's blank and on the other side. KELLY:

CAGIANESE: The other side is the sharpshooter. Transcriptions of Nagra Tape Recordings made by Government Agent Joseph Kelly furnished by the Government as 3500 material heard by Jury and used by Jury

MAY 2, 1976

Page 152

CAGIANESE: How many of these can we have when, to-

morrow.

CELIS: Well, I have some blanks and I have three

these signed.

CAGIANESE: Three signed and some blanks, good.

GERALDO: Well, you can fill the order you want,

can't you,

MAY 2, 1976

1

Page 162

CAGIANESE: How much money you need?

Rodriguez, he is the first director of this corporation. It is not a non-profit

organization it's a - but we call it a (U/I). And he is the first director, he is the executive. So I will know in advance then what will be needed and which companies will be bidding for the construction of the plant. The plant, now that we are finished, by the NK Teer, which

is an American Company.

GERALDO: N K Teer N K and another Corporation Teer.

NKT

They both got together.

U/I

Transcriptions of Nagra Tape Recordings made by Government Agent Joseph Kelly furnished by the Government as 3500 material heard by Jury and used by Jury

MAY 3, 1976

Page 4 : A.M.

ALVAREZ: They just say for the use of the armed forces .. You know

Now who are these people who are signing the

letter.

KELLY: Colonel Rodriguez, he's alleged to be the Chair-

man of the Joint Chiefs of Staff

STAGG: The Boss.

KELLY: For San Salvador, El Salvador.

ALVAREZ: He will be signing all the "End User" Certi-

ficates.

STAGG: He signed them?

KELLY: He's already signed them.

ALVAREZ: Alright, so that....

STAGG: Dominick had a letter from these guys, just his

signature on the bottom.

May 3, 1976

Page 43 : 5:35 P.M.

.ICHAELSON:

The "end use".

KELLY:

The thing was already there.

MICHAELSON:

The one that was ready, it was signed by Rodriquez, and empty in the middle.

18 41 182 12 22.

D. of N

Form No.USA 33s-306 p. 1

STATEMENT OF DEFENDANT BEFORE ARRAIGNMENT MADE TO ASSISTANT UNITED STATES ATTORNEY Date: May 15, 1976 Time Interview Commenced: O My name is COBERT COLD, I am an Assistant United States Attorney. You have been arrested for a violation of 18 0 371

which relates to COMPTIVE TO THE IN a few minutes you will be taken before the United States Magistrate who will fix bail in your case. States Magistrate who will fix bail in your case. Do you understand that? * Ves - Dunderstand Q You have a constitutional right to refuse to answer any of my questions. Do you understand that? Ves - I understand Q You have an absolute right to remain silent, and if you choose to answer any questions, any statement you do make can be used against you in a court of law. Do you understand that? · yes - I understand Q You have a right to consult an attorney and to have that attorney present during this interview. Do you understand that? DEFENDANT PODRIGUEZ EXHIBIT U. S. Dist. Court

· yer- I understand

Q If you do not have funds to retain an attorney an attorney will be appointed to represent you and you do not have to answer any questions before this attorney is appointed and you can consult with him. Do you understand that?

A. Yes- I understand

Q Would you like to answer some questions about your background? You may pick and choose those questions you wish to answer, and you may stop at any time.

Rudviguez

SAME MUNUEL ALTERNA DOB SOLA LINE MARITAL STATUS MARITAL STATUS MARITAL STATUS

SPOUSE Isuura Sildaña

SOCIAL SECURITY NUMBER DOB: June 17, 1432

CHILDREN: 5

ADDRESS: Calle Cuztlan San Salvada

APT. RENT:

HOME TELEPHONE: 239330

BEGAN LIVING THERE: more than 2 years ago

PREVIOUS ADDRESS:

DATES .

EMPLOYED:

CHIEF OF STAFF. ARMED FORCES EL JALVADOR

HOW LONG: SINCE 1972 (June 1,1972)

BUS. PHONE: 218280 (Mari no.

WAGES: 3500 X12 Colones calculation of U.S. A (= 6, 250)

PREVIOUS EMPLOYMENT: brigate communda

Soldier for entire life

WAGES:

PARENTS: Wother ADDRESS: El Salvada

WHO RESIDES WITH YOU? Wife and 5 children + 4 servants

WELFARE? FOOD STAMPS? UNEMPLOYMENT?

SELF: AMOUNT

SPOUSE

PROGRAM: LOCATION:

ARRESTS NUNE -1-

-2-

-3-

-4-

PLACE

CHARGE

DISPOSITION

SENTENCE

TIME SERVED

PROBATION

EDUCATION: military school - El Salvader

YEARS:

WHERE: Studied at military command schooling Santiago, Chile 1957-1959

Form No. USA 33s-306 p. 3

CURRENT MEDICAL PROBLEMS:

PHYSICAL: goot complication, recent tenden publicumin MENTAL: at the moment ... nc!

HAVE YOU TAKEN OR ARE YOU NOW TAKING DRUGS? HEROIN (MO) COCAINE (MC).

NO

ADDICT?

EVER ADDICTED?

WHAT DRUG?

DRUG PROGRAM?

ALCOHOL? Social dvinker

MARIJUANA OR HASHISH (MC):

AMPHETAMINES (40).

METHADONE (00).

LSD (10). OTHER:

DO YOU (OR YOUR SPOUSE) HAVE ANY BANK ACCOUNT? no bank accounts in WHERE: El Salvador - 4 accounts USA, Su. tenland on FINANCIAL: totalling appreximately 100,000 colones Panama

CASH ON PERSON Counct estimate

SAVINGS 5 a 10 thousand adones (disldrens accounts)

STOCKS OR BONDS NC

CARS - 4 for personal (Toyota, Planneth etr.)

HOUSES - 3 for personal use (and that of family)

OTHER PROPERTY - Some undeveloped (and

DOES YOUR SPOUSE WORK? NO

WHERE?

CITIZEN OF: El Selvador

PLACE OF BIRTH:

AHUACHAPAN

ALIEN REGISTRATION NUMBER:

REGISTERED WITH SELECTIVE SERVICE?

HAVE YOU EVER SERVED IN THE ARMED FORCES?

WHEN?

ENTRY TO U.S. DATE: Thursday, May 13,1976

PORT OF ENTRY: New Orleans, (a

TYPE OF DISCHARGE?

DO YOU HAVE ANY RELATIVES IN N. Y. AREA, OTHER THAN THOSE MENTIONED ABOVE? NAME : ADDRESS:

Lugater - Amon Patricia

Washington D. C. (Student) does not know exact address

wife flew to New Orleans with him in 5-13-76 but flew to D.C. to visit day wer.

THEY TORE YOU ARRESTED? alout on have where? Inche!

the troth is . I have me complaints against them would you like to tell me what happened?

- is whi told you to jo to the hotel where you were overested ? I am to jo to the hotel where you were
- 4 The truth is that I travelled there with my friend Miguel Celis my triend from El Salvador
- Q Does Miguel (this hold any position in The army or government of El Salvader
- ANO

(1)

- Q why did you travel to the hotel today with migrel?
- A I came une today to meet my wife and then return to El Salvada
- a Here long did you plan to stey in New Yak?
- A until about monday
- a why did you go to the hotel today
- A I don't know where I was taken
- Q Do you enclasted that you are being questioned by two AUSAI and that it is a featural crime to tell lies to tuch federal afficers?
- A yes- Dunderstand I'm nut lying

- In the purpose of a leader
- . O.c. tun man (Jee Kelly) you you \$177, bee
- : They put in there!
- à oid you count it?
- A they insked me to
- was that money for you?
- + they said it was for friendship
- 2 what did you do to become (S/A Kely's) triend
- = nothing
- a How many french have given you of s, ook much:
- 4 none
- 2 Again why were you siven 475, orc
- = so that I would belief some gous funthe U.S
- Is that your signature (snowing endune).
- + No sin!
- I what is your rout in the wilitary?
- 4 (overed ar Artilleria
- I Do you know that your conversations tright were tope recended?
- : (shrussed)

	DEFENDANT'S STATEMENT - Co					
Q	Oid you ever jive anjone your synator on a blank piece of paper					
	A -					
Q	Why did you and M Westehester?	iquel ge to the Hotel in				
A	To meet with his	suite tomorrow				
a	Deer your wife &	non where The Hotel 15				
A	NC	. Cl Solvader				
6	How may soldiers in the army of 21, scrould					
À	How many soldiers in the army of El Solvader about 5,000 to 10,000					
-	3)					
	TIP	ME INTERVIEW TERMINATED: a.m. 740 p.m.				
	WITHESSED: ASSISTANT U. S.	ATTORNEY Robert Solal ALLS A				
	AGENTS: Tim	The Felly Much A Fifty ALL				
	BAIL RECOMMENDED:	POSSIBLE BAIL SUGGESTED BY DEFENDANT:				
	3 million Cosh	TIME OF ARRAIGNMENT:a.mp.m.				
	HEARING:	LAWYER				

APPOINTED OR RETAINED (CIRCLE ONE)

THERERED (SIMULTANEOUTRY) By The fruited

5/15/16

BAIL WARNINGS GIVEN?

TELEPHONE

- Anterview of Rodriguez to Junto

- Q Did you intend to meet some people in the hotel tonight
- A yes- some friends I don't
- Q what was the \$5,000 for? A. it was for goodwill because I had solicitéed (signed) a paper of the U-s- State Apatment they said it was a petition to the State Repartment - a few days - I'm not sure - I syred it'in my Country
- Q Ds that the document which you Signed (Shoving State Apartment questionmare) Rebert ged Cursh 5.15.

A yes

Page Y

it is a petitern to begging How many jour diel you ask The State Repartment for? description - white mon-who was arrestred toning ut -I should cold that this is normal - I have done this about: 5 or 6 Times gan to 8gh the State Reportment John - Showing him Tobokman A yes - that's the man How many gurs diel Tobokman want you to being gurs diel Tobokman want you to being affection because my

photostando 40A Faffer Ted Judien 76 Country doesn't buy suns - and I'm not in charge anyway a Did you dende to key the guns! A The Defense Minishy buys thegins a Did you send stobokeman fi the Defense Manister A Because it normal a Hou much money were you fory to So you becomed free sun and Ispoofu no austre 95 SA

Too Jantier -

a Did you count the money

96 SA

BEST COPY AVAILABLE

U.S. DEPARTMENT OF STATE

CONSIGNEE PURCHASER TRANSACTION STATEMENT

	Feta	obs	Mayor	General	ah	1 a
			-A.cmada		uc	14
	rues	Zd	A. mau	-		
STREET AND NU	MBER					
CITY	San	Sa	lvador			
COUNTE	-	Sa	lvador			
	Approximation and a		406	6/NA222		

GENERAL INSTRUCTIONS

HEFERENCE (if desired)

The torre must be submitted by the importer (ultimate consigner shows as from 1) and by the overseas buyer or purchaser, to the challed higher exporter or seller with whom the order for the policies described in item 3 has been placed. Thereafter, the U.S. exporter must present this completed form to the U.S. Depart onest of State within 90 days from the date appearing in Item 6 or light v. who fiver is rater. All items numbered 1 through 6 (and 7 when apply able) on this form must be completed. Where the infor-

mation required is unknown or the item does not apply, write in the appropriate words "UNKNOWN" or "NOT APPLICABLE." The signatures required in Item 6 and 7 most be those of responsible officials who are authorized to bind the ultimate consigner and purchaser to the commitments in this statement. If more space is needed, attach an additional copy of this form or sheet of paper signed as in Items 6 and 7.

Hennest

We request that this statement be considered a part of the application for export license (DSP 85) of equipment on the U.S. Munitions

MOTT HAVEN INDUSTRIES LTD., Bronx, New York

U.S. exporter or U.S. person with whom we have placed our order (order party)

 $\tau_{\rm OC} \leftrightarrow {\rm post} \gg \alpha s$ of the commodities described in Hem 3.

3. Commedities

We have placed an order with the parson named in frem 2 for the following commodities in the quantity and value indicated below

QUANTITY	COMMODITY DESCRIPTION	VALUE US S
	Bushmaster pistol/submachine guns Cartridge 5.56MM (for above item) with	2,550,000.00
,500,000Rds	TO CR SUB- TO A SUB- 435 SEP 27 1978 EXHIBIT U. S. DIST. COURT S. D. OF N. Y. 3. D. OF N. Y.	255,000.00

 Naturé of brancess (Comparte du tatiesme) sentemas usua the appropriate term! (For example: government agency, broker, distributor, date exten, con afactorer symplesider setador, etc.).

National Defense

by all the reconnectations are for resaid. The nature of our customer's usual business is.

Not applicable

Additional information (Add any other material facts which will be of value in considering applications for licenses covered by this statement. Include information on use, rusale, manufacture, customers, incorporation in other articles, etc. as applicable.)

Our purchase order for the material listed in item 3 has been issued to San Pan Trading Corp., Woodbury, New York, who will obtain this material from Mott Haven Industries Ltd., Bronx, New York, who are export representatives, Gwinn Fire Arms Company, Winston-Salem,

(Reproduction of this form is permissible, provided that content, format, size, and color of paper are the same.)

FORM DSP II.

Please continue form and sign certification on reverse side

FORM APPROVED OMB NO. 47-R0175 worth Carolina are the manufacturers.

Give home of company with which order was placed

Complete "b" only if the commodity is purchased for resale

type or point name and title of person signing document

grisde, model number, military nomenciature, federal stock number, name plate data, etc.

the porchasing firm. The name and title of person signing this Item must be typed or printed



U. S. DIST. COURT S. D. OF N. Y. EXHIBIT GOVERNMENT'S S 6 27 19/6

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It is not necessary to complete this Item unless the US expecter has been requested by the Department of State to obtain a non-cetralistic assurance from the foreign importer's government. Such a request will not be made where either the ultimate consignee

consigner must be person abroad who is actually to receive the material for one use. A bart, freight torwarding agent, or checker, is not acceptable as an ultimate consigner.

Describe commodities in detail wherever possible, giving particulars such as name (basic ingredients, composition), type, size, gauge,

Only an official of the ultimate consignee named in Item 1 should conclude this Item. Be certain to sign statement in ink as well as

ultimate consignee is unknown. Be sure to type or print the name of purchaser. This space must be signed in ink by an official of

The making of any false statement, the concealment of any material fact, or failure to file required information may result in denial of participation in United States exports. Notarization is not required

supply any other information not appearing elsewhere on the form such as other parties to the transaction, etc

from 7 - It is necessary to complete this frem only if the purchaser is not the same as the ultimate consignee shown in Item 1 or if the

A TRANSCRIPTION OF THE VIDEOTAPE INTERROGRATION PREPARED BY THE GOVERNMENT

OF THE MAY 15, 1976 HILTON INN INCIDENT Conversation with Colonel Rodrigues taken from Yides take recording on May 15, 1976.

unidentified

Ch, Halio

Speakers

Background noise, unincelligible

STAGG:

On, Angelo, ... saut that A. puil up a

chair, you don't mind, eh.

ELLS:

Oh - no. Please

Someone speaks; unintelligible.

STAGG:

Sure.

Unidentified (Unintelligible) ... things, their we have a

little drink. (Laughter).

STAGG:

Speaker

Bobby!

If you want; you want just take care of business first and then we go drink. We drink all night. On lots get rid of -

Unidentified

We have but one thing waiting.

Speaker

STAGG:

Ok, we get a h... There is a whole thing. Ok, Alright? I have, I have my own inter-

GOVERNMENT'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

preter.

Unidentified

Speaker

STAGG:

UK.

Unidentified -

Speaker

Unincelligible

STAGG:

This is my boy Angelo. Now, there is no

mistrust Colonel. Ok. But ...

CELIS:

He says that there is no, nothing, I mean

that there might ... nothing, mistrust. (In Spanish)

RODRIGUEZ: (in Spanish)

Ya, ... unintelligible.

STAGG:

But I want you to understand that you know everything that is going on.

CELIS:

But he wants to be sure that you know everything that is going on.

STAGC:

Ok. Now we buying the guns and ...

CELLS:

He is buying the weapons.

(in Spanish)

(in Spanish)

(in Spanish)

STAGG:

Ok, and we are going to pay you for all the paper work that you give us.

CELIS:

And that he is going to pay for all the paperwork that ...

STAGG:

Give me that, give me that, where is, where is that, alright.

Pause - words are spoken, unintelligible due to background noise. Pause.

(Pause)

CELLS:

Damned!

(in Spanish)

STAGG:

Now, Colonel, we have ordered these guns.

CELIS:

They have already order the weapons ...

(in Spanish)

RODZIGUEZ: Unintelligible.

STAGG:

You have that pink piece of paper?

CELIS:

I have.

STAGG:

Can I have it please.

CELIS:

Eh, It, it is in my briefcase. With the ...

STAGG:

Alright, Bobby will you please ... (unintelligible)

CELIS:

(Administration)

I will tell you which one it is. You remember the one that ...

STAGG:

No, bring the briefcase, just bring this briefcase, don't, you go in your briefcase. You bring his briefcase. (pause)

Now if, if the State Department checks ...

CELLU:

If the State Department "Chequea" (anglicism) (Chequa translated into English - check up (in Spanish) or follow up).

STAGG:

On these guns going to your country ...

CELIS:

On those ...

(in Spanish)

STAGG: How are we protected?

CEUIS:

On these weapons that are going to El Salvador. He says; "How would they be (in Spanish) protected."

RODRIGUEZ: (in Spanish) That if they Chequea? (anglicism - translated into English - check up on - or forlow up on).

CELIS:

In the event that the State Department, says, (in Spanish) takes some control, not control, some "chequea" (anglicism - translated into English - to check up or follow up). Then ...

RODRIGUEZ:

Should ask.

(in Spanish)

CELIS: (in Spanish) Ask something, and they would ask you of the weapons destined to El Salvador, destined to El Salvador; that if they would be protected

RODRIGUEZ: (in Spanish)

Protected in the sense that ...

CELLS:

In the sense that the State Department, will, they would not like to have any problems with (in Spanish)

the State Department. I suppose that they would be protected in this sense; that you would say; Yes, I signed this; true.

RODKIGUEZ: (in Spanish)

Noise the problem, (noise, unintelligible) ... pending.

Unidentified Speaker

Is this yours?

CELIS: (in Spenish)

Yes - (Pause) Yes, There is no problem, because they would check on him and everything ...

TOBOCMAN:

Now, Ex ... Explain it because after this meeting we never want to ask for extra extenations again. So please explain that if a piece of paper comes to him in a month or whatever period it is; what his action will be; what the procedure will be from there. Just to make them feel comfortable.

CELIS: (In Spanish) In the event that a document from the State Department arrived at your office.

RODRIGUEZ: (in Spanish) Into my office?

CELIS: (in Spanish)

Yes (pause) You would have to ...

RODRIGUEZ: (in Spanish)

Of course, I would have to see it.
As far as that res; there would be no problem.

KELLY:

Let him, let him, what was the response.

CELIS:

He said that, any paper that will get there, have to go to his office. And he has, eh, eh, he will, first he will keep it you know, but, the men that will receive it, his secretary which is a personal trust ...

CELIS:
(in Spanish)

I am telling them that your secretary is the one that would receive all the mail.

KODRIGUEZ:
(in Spanish)

. Troph

Of course, of course.

CELIS:

And he is a man of your complete trust. And that there can be no problem in that area...

RODRIGUEZ: (in Spanish) There is no problem.

KELLY:

Now, wait, wait a minute.

CELIS:

Yes.

KELLY:

He gets inquiries from the State Department that ... have you received the ten thousand machine guns? What is to keep it from going to somebody other than himself, and somebody saying; What ten thousand machine guns? Because as you know, we are getting the ten thousand machine guns and they are not going to El Salvador.

CELIS:

Yeh, I know - We already discussed that, he and I.

KELLY:

Will you tell us. Would you ask him if ...

STAGG:

We are glad that you discussed it. I want to know ...

CELIS:

Yeah - eh

STAGG:

I am sorry, I want to hear it.

KELLY:

I want to hear it from the Colonel.

CELIS:

Ehn - We believe that if, suppose it goes to someone else rather than him; let's put it this way ...

KELLY:

Can you ask the Colonel this.

Please.

CELIS:

Who, who he is the higher, I mean, no one would arrest him.

KELLY:

No, well you know, that is not what we are saying.

TOBOCMAN:

You have to listen. Because you ... You dad ... We ask you ask the Colonel. He is in New York now.

CELIS: Yeah!

Now, if a piece of paper by accident goes to TOBOCMAN:

the president There arethree other important

people in the country.

CELIS: Oh, Yeah.

TO BOCMAN: Well one of the other two people.

CELIS: Yeah, Yeah.

It now comes to that president or to somebody TOBOCMAN:

else, not to his trusted employee.

CELIS: Uhuu

TO BOCMAN: Explain, the, what is the consequences of the

problem with that.

CELIS: Yes.

CELIS: They would like to know, for example, they say what would happen if this document come (in Spanish)

to the hands of another person. For example the president of the republic. In other words,

we have it already ...

RODRIGUEZ: Yes.

(in Spanish)

But suppose it got there. They are seeing ... CELIS:

He could talk to me about it, but I think RODRIGUEZ: (in Spanish) that there would be any problem. If he becomes

aware; the document arrives; and what is this, he might ask, but I will be able to explain.

CELIS:

Yes, I told them that we had spoken about this also. You know - what would happen if by; (In Spanish)

whore! ... got to ... I mean, someone found out that you are doing something; and ... the truth of the matter is that they can't gay

anything to you. Ehh.

RODRIGUEZ: No. (in Spanish)

- 1 -

CELIS:

Besides,

(in Spanish)

RODRIGUEZ:

(in Spanish)

We are very clear with this problem - Above all - if my government were to pay, in that sense, I would have problems.

CELIS:

Yes - that is it, basically. Well - Eh.

(in Spanish)

Unidentified

Ok - (unintelligible comments)

Speaker

MICHAELSON:

We all want to hear.

STAGG:

That's my ears, that's my ears over there.

STAGG:

(laughter) ...

0k. -

CELIS:

Ok.

KELLY:

Wha - What was, the .. go ahead.

CELIS:

Eh-Eh-let's suppose that ah, eh - The problem would arise that, it the government of El Salvador would pay the guns, and then the guns never would come to my country and then one says; where is the money? He might, eh, I mean, I think he can stole the money. But that not the case ... that's not ...

STAGG:

However, we're paying him ...

CELIS:

Yeah, I know.

STAGG:

I am paying him. Ok. Now, I want to make sure you know everything - You are getting seventy-five thousand. Ok. He is getting, and I want you to tell him.

STAGE :

You know what he is getting

MICHAELSON:

Twenty-five

STAGG:

No, you are getting five percent.

MICHAE. ON:

Oh - I am sorry, I thought you meant now, today.

STAGG: Ok, I want, I want, I want every-

body to know the deal.

TOROCMAN: (overlapping) ... If you just say, say it all.

MICHAELSON: No, No, No, No, Ok.

STAGG: Because I need this man.

MICHAELSON: Please say it all, there is no ...

TOBOCMAN: Overlaps - unintelligible ...

STAGG: Don't everybody talk at one time, you don't make me think!

TOBOCMAN: Tony, everything is open and above order Ok.

I am telling you. Now, he knows he knows Ray.
We're getting five. Ok.

KELLY: Is the Colonel ...

STAGG: He didn't answer yet ... He didn't answer

CELIS: Eh - He is saying that in this deal we are receiving seventy-five, pesos (in Spanish). seventy-five thousand dollars.

RODRIGUEZ: Yes. (in Spanish)

CELIS: And they will receive five percent of the (in Spanish) transaction. (pause) It is to ...

RODRIGUEZ: We are in agreement. (in Spanish)

CELIS: Yes.

Enfortance No.

STAGG: They understand everything?...

CFLIS: Oh, yes.

Now, what about after we get our ten thousand.

We want somemore. Because our original deal
with, with Bob, was thirty million dollars

worth of stuff.

CELIS:

Uhuu ...

STAGG:

Ok, we all can't go thru El Salvador.

Unidentified

Right

Speaker

STAGG:

You can't buy that kind of stuff. How do we

handle it after that?

CELIS:

Ok, we will handle this situation thru them. Because they will come thru us, eh, to us,

and then ...

STAGG:

So you will get us the country and the

MICHAELSON:

Alright let me answer that.

Unidentified

Speaker

Right!

KELLY:

Ok.

MICHAELSON:

We are going thru the semantics right now...

Let me answer how we do it. Thru the Colonel, thru Miguel, they: ... The Colonel has been favored by certain countries, to go Nock and see and feel and everything else; and he is very close to a lot of the high officials; like he is in other countries. If necessary, we have had this discussion. If we had ... we feel that Salvador has reached the point of, it will be silly to ask for any more than let's say ten million dollars worth of ... We can then go to - thru the Colonel, and thru Miguel, ah, to another country say, do me a favor. I need a ... certificate, so and so on - ...

STAGG:

So, you understand that?

CELIS:

Ehh, I, I, I (unintelligible)

KELLY:

200

Mike, Mike, can I just say something, ok. (pauce) Mike, we know the way we do business;

ok. We know, what you have just said. We heard it before in there, we want to hear it from the Colonel.

STAGG:

Mike ...

KELLY:

As Tony hears it from his father, we want to hear it from the Colonel.

MICHAELSON:

Ok. ok.

CELIS:

He says ... Well let's see now, about the negotiations because ... They are happy the (in Spanish) way this transaction was taken care of. It was one, but they dcn't want only this one, they, as I told you the last time we met; they want more. I mean, buy 30 million dollars of ... of ... how would you say, war material. The what to do? So I told them that what has to be done was, that they go

back to us and we do the same paper work and all that.

CELIS:

But there is certain limitation.

(in Spanish)

RODRIGUEZ:

Yes, of course.

(in Spanish)

CELIS:

For the following reason. Because El Salvador is not going to buy thirty million; whore! (in Spanish) Damn! No, No. We would be hung tomorrow!

Unidentified Speaker

(Unintelligible)

CELIS:

(in Spanish)

Then, then what we had thought of was, that that thru governments of ... of, I mean ... You would go to people that are in the same as you, in command position in other countries. For example; We had thought of approaching the Chileans. Eh, that ah - we have done that already. Eh -, Guatemala and other countries to cover; because thirty million dollars of ... dann, the whore!

Speakers in Background (unintelligi'le).

CELIS: (in Spanish) Someone is going to say, what in the world is El Salvador doing, arming up against the U. S. ...

(Laughter) in Background.

RODRIGUEZ: (in Spanish) No, that is a large amount, and in reality our countries have limitations.

CELIS: (Yes. Eh - Do you agree with what I just said?

ANGELO:

Yes.

CELIS:

Would you please translate to him, please.

ANGELO:

Ah - he said, oh. The gentleman over here said that - ah - they would go through the Chilean government they have done before; and, and also he said it for Guatemala; I believe.

CELIS:

Aha

ANGELO:

And that, ah, it could be arranged through that type of set up.

CELIS:

Aha. Yeah, in other words, we know that our capacity, that the government of El Salvador, we - if - what happen if the govern... if the State Department will see that we are buying thirty million worth of ... Jesus! They are going to believe we are fighting all the Central American countries. Then, we can have a little trouble from them.

STACG:

10

Then, whh - you can handle that.

CELIS:

Oh - Yes, sure, sure.

Someone Speaks

Unintelligible.

CELIS:

Excuse me! Please to finish this; thru him, because he was educated in Chile, he has ...

friends, not only eh, collegues, eh, because of they have the same position. So; But personal friends that he has invited, already, to those governments, by those governments! And those people, that were his friends, are the big generals now that are ruling Chile, eh, Uruguay, Peru and all that. So if he calls them. I can go and open the door; knock on the door and they will open at the door. You follow me.

KELLY: In other words

CELIS: He has personal friends that are ... in the ...

KELLY: We can get the proper papers for the United States thru your contacts.

MICHAELSON: If we have to buy U.S. (unintelligible) ... products.

STAGG: That's exac ... that's what I've tell ... you can't get anything else any place else and we have to go thru U.S.

KELLY: We, We just want a foundation.

STAGG: Lay a foundation.

TOBOCNAN: Can I say something as a matter of record?

STAGG: Absolutely!

TOBOCMAN:

Do - not - commit yourself to a third party, for another country, until I and Bobby, specifically say, Now it's such and such a thing. It will be such and such a thing. In other words, I don't want this to make you fellows feel that you can go like a bird and take care of the case on your side until we make sure. Cause it's nice that he has friends and if we are going to be responsible, Bobby and I want to say to you; Yes, Guatemala said yes, for so many dollars for so many things.

Unidentified

Right

Speaker

MICHAELSON: And then I will feel comfortable.

RODRIGUEZ: If perhaps I would want to clarify this pro-(in Spanish) blem, I would have to talk to them first.

CELIS: Ah, Y (in Spanish)

Ah, Yes, of co...

RODRIGUEZ:

(in Spanish)

This is not a matter that we are going to take for granted, and ...

CELIS :

Sure.

(in Spanish)

STAGG:

What he said.

ANGELO :

he said that he would have to talk to his friends first, and that way we would know...

STAGG:

Ok, Ok, Good that's a good idea. Because we ... (unincelligible)yet.

Can we use that pink piece of paper?

MICHAELSON:

Just for - Just for a matter of record. There is, he was in, in Honduras, Panama and Columbia thru Irv and I's connections, of which they are a part of us. There is possibility.

KELLY:

Angelo; would you tell the Colonel for us that the papers he gave us, the end use, are in the Scate Department now. We haven't received our guns yet, but we are willing on good faith and as a friendship to him to pay him for his help in us getting our guns at this time.

ANGELO: (in Spanish) Gentlemen, he said; that, the document that he received from you is at the State Department. But at this time we have not received any of the, the, the machine guns or whatever. But we are going to give you the money as a sign of good faith, and we hope the same on your part in delivering the machine guns as agreed.

RODRIGUEZ: Well, to start with, the problem of the machine (in Spanish) guns is yours. You, spoke to me about a document.

CELIS: Yes, there it is

(in Spanish) Here is the document - this is the document.

(overlapping comments unintelligible)

CELIS: Oh, Yes, he signed it.

ANGELO: Yes, he is more than aware that there is no problem.

TOBOCMAN: I just want to make sure this this seal is on.

STAGG: The seal is on?

TOBOCMAN: Unintelligible ... put it in his pocket.

STAGG: Alright. Oh Miguel. You want to, you and Jo Jo want to count this money here.

CELIS: Unintel:igible.

STAGG: No, No, we'll count it. I don't wart problems.

KELLY: Well, we. We.

STAGG:

Now he got to understand one thing. Ok.

While you count this money. That every three
million dollars worth of guns we buy, according to bobby, he gets seventy five thousand
dollars cas!.. Do you understand that? Will
you please tell the Colonel, for every ...

RODRIGUEZ: What?

E

CELIS: For every three million dollars, they buy, (in Spanish) we are to have seventy five thousand dollars.

KELLY: If he supplies us with the documents that we can go to the State Department.

STAGG: If he supplies the documents or if he has to go someplace else to supply the documents it's still the same amount of money.

RODRIGUEZ:

Yes.

STAGG:

But (in Spanish) - "Coronel", (translated into English Colonel) only on delivery, not like this no more. We showed our good faith. Ok. And we want to deal like-we both trust each other.

TOBOCMAN:

If he says something we put our name behind it Ok.

CELIS: '

Uhuu

TOBOCMAN:

So -

STAGG:

Explain.

CELIS:

(in Spanish)

He says that this time, well, still they have to buy the weapons with that document, and they still have nothing to show. They say that next time it's not going to be ...
This has been in sign of good faith and good will. But the following ones are going to be one on one, one on one. Here is the stuff here is the dough.

RODRIGUEZ: (in Spanish) Yes. (pause) No on this problem, understand, that, in reality, the State Department, perhaps they; could also ... No, pressure us ... too frequent, it might happen that ...Well, create some problems - you know.

CELIS: (in Spanish) There is also a very important matter, and we have to let them know. And it is that we are going to have the opportunity of being in Europe. And we can buy and the State Department willnot bother us. We have a great connectior in Germany. Whored, so why ruck around with American weapons when weapons are weapons. And then, instead of us being here fucking around with the State Department problems.

I am going to leave these with Joe, so he can study them and then he can return theirs, for they are ... or he can keep all this shit.

RODRIGUEZ:

(in Spanish)

STAGG: What is this?

Yes.

ANGELO: (unintelligible) Brochures about guns in

Germany, I am sure you would like to see them.

KELLY: We will talk later about this with Tony's

father. At a different meeting. Okay?

CELIS: I want to leave these with you ...

Ah, you want to leave this with me. Oh! KELLY:

Fine, very good, very good.

CELIS: Eh - I am celling him.

STAGG: Want to start counting the stuff or we'll

be here all night.

Perhaps it would be necessary you emplain RODRIGUEZ:

the problem. We have purchased from Germany. (in Spanish)

CELIS: Yes.

(in Spanish)

RODRIGUEZ: Already; Weapons .. unintelligible

(in Spanish)

STAGG: You want to help him.

We will take yours too. Yours is there too. KELLY:

Unintelligible -

CELIS: Help me count, let's see.

(in Spanish)

KELLY: I would like you to count it please.

And me too. I don't feel that I want to TOBOCMAN:

count.

Packground noise

Long Pause

CELIS: fifty-, five thousand here.

STAGG: What's up?

ANGELO: I am going to say (in Spanish) that each one contains five thousand. There are five thousand.

and in each - Fifty one hundred dollar bills.

CELIS: Yes.

ANGELO: Fifty one hundred in each.

(in Spanish)

RODRIGUEZ: Fifty.

(in Spanish)

CELIS: Put them here

(in Spanish)

Unidentified (Unintelligible)

Speaker

CELIS: Ehh - one, two, three

(in Spanish)

(pause) cough, background noise.

Pause, cough.

STAGG: How come you don't want to count, what is

the matter?

MICHAELSON: Huu - He counted it.

STAGG: Oh!

MICHAELSON: I got to check him out.

STAGG: Oh -

TOBOCMAN: Thirteen; that's what I would like to do with

you. Fourteen, is not to be pushed to count

this, and I just lost the count again.

Yeah - Laughter.

I would rather not count it.

STAGG: I'd, I'd do that purposely. Count it.

TOBOCMAN: You want to push me count it.

MICHAELSON: In one of these is a hundred bucks over.

TOBOCMAN: We did that routine already.

MICHAELSON: Right now ... unintelligible.

Pause - Background noise.

MICHAELSON: I just, I wish Dom was here.

STAGG: So do I ... Ah you ... unintelligible.

TOBOCMAN: That, that package there ... (unintelligible)

MICHAELSON: Maybe I'm going to ... unintelligible

STAGG: Ah - no, no, no, no, no, no. - This is all, this is all, this is all the guns we can get from you guys.

TOBOCMAN: I don't know.

(overlapping conversations. Unintelligible)

KELLY: Eh - Ask, Angelo, ask, ask the Colonel if he is perfectly clear that he knows that this money is for:

ANGELO: Unintelligible

KELLY: For the guns, for the papers he supplies to us for the guns.

ANGELD: If you have understood that this money is for the payment, that you, in the future will have to give us the armaments.

CELIS: (Overlapping) They are ready.

(in Spanish) Hu, no; The papers are ready. He has the papers. This payment is for the paper work.

ANGELO: Ah well - for the piper work, yets .. He, He knows. He understands that ...

CELIS: Ah - Yes.

RODRIGUEZ: Yes, I understand that this is for the doc-(in Spanish) ument that Miguel has delivered to you

ANGELO: He understands that this is for, eh, the paper, ah, the document that he got to this person over here.

KELLY: The paper, that from the ... that we put the State Departments so that we can get our guns; Hopefully.

RODRIGUEZ: We are clear. (in Spanish)

CELIS: Yes.

MICHAELSON: As far as the, anything we do - we have had a lot of conversations with Dominick. Dominick is going to want price, that's his business.

KELLY: That is your business to work out with Dominick.

MICHAELSON: Just want you to know.

KELLY: We understand.

STAGG: I told you, nobody gets cut out. Nobody. Everybody, everybody here is going to get what they have coming. I don't want anyone cut out.

TOBOCMAN: You are talking to the teacher.

STAGG: Alright, Oh Yeah let me explain one thing, before ... Excuse Joe, Ah - Colone, Does he have one of the things that you carry, I'd like to see one. Just ... (unintelligible) so I can tell Pop that everything is alright.

CELIS: Do you have your passport? (in Spanish)

RODRIGUEZ: Uh -

STAGG: You do the same if I'd come to your country.

RODRIGUEZ: Sure, Sure. (in Spanish)

CELIS: You know what we ... I ask him to show the passport. That is a diplomatic passport here.

MICHAELSON: Unintelligible ... I'd better count again.

STAGG: Can you read you want to check that out?

CELIS: Well, one, two, three, four, five, twenty (in Spanish) five. One, two, three, four, five; fifty.

Background noise and overlaping comments.

ANGELO: Everything is in order.

KELLY: Want to make sure the money is right.

CELIS: - Five (in Spanish)

STAGG: Yeh - I think he's ...

KELLY: You guys not it there now? Seventy five thousand dollars. It's all right. Twenty five thousand.

TOBOCHAN: I don't want to count it. -

KELLY: Sneezing

STAGG: Tell Pop we are over here,

TOBOCMAN: Everything that I said.

Unidentified We are federal officers, you are all under Agent arrest.

Everyone stand still. Federal Agents. Ox. You are all under arrest; United States Federal Agents Unidentified Agent:

Do you law any guns or gun?

Up again; the wall (unintelligible)

against the wall.

Long pause - Background noise.

AGENT:

Keep them handcuffs down the line

AGENT:

We are going to need someone.

AGENT:

We are short handcuffs.

AGENT:

Nobody has handcuffs -

AGENT:

Anybody has handcuffs?

AGENT:

Handcuffs?

AGENT:

Handcuffs?

AGENT:

Anybody has extra handcuffs?

(NOTE: There is more audio heard on the audio tapes and not transcribed here. Tape procedure set forth in United States v. Chiarizio, 525 F.2d 289, 293(2d Cir. 1975) was not followed.)

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3/2/17

2:30 PM.

